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McKINNEY'S
Consolidated Laws of New York
ANNOTATED

BOOK 16
EDUCATION LAW

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Consolidated Laws of New York
Annotated

THE CONSOLIDATED LAWS OF NEW YORK ANNOTATED

The books of this edition are arranged and numbered as follows:

1. Report of Consolidators and Treatise on Statutes and Statutory Construction
2. Constitution of New York Annotated, Constitution of the United States, Declaration of Independence and Magna Charta
3. Agricultural
4. Banking
5. Benevolent Orders
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7. Canal
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New York. Laws, statutes etc. Compila-
tions

THE CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

AS AMENDED TO THE CLOSE OF THE REGULAR SESSION OF THE LEGISLATURE OF 1916

Compiled under the Editorial Supervision of
WILLIAM M. McKINNEY

BOOK 16

Education Law

EDWARD THOMPSON COMPANY
Northport, New York
1917

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STATE OF NEW YORK
OFFICE OF THE SECRETARY OF STATE } *ss:*

In pursuance of the authority vested in me, by section 932 of the Code of Civil Procedure, I, Francis M. Hugo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

Given under my hand and the seal of office of the Secretary of State, at the Capitol in the City of Albany, this 5th day of July, 1916.

[L. S.] FRANCIS M. HUGO,
Secretary of State.

The annotations in this book close with the cases reported in the following volumes:

217 New York
170 Appellate Division
93 Miscellaneous
159 New York Supplement

The Supplements will cover decisions from these points.

INTRODUCTORY

Prior to the year 1909, as appears by the report of the Board of Statutory Consolidation (1907) at page 887, "Educational matters were regulated by the Consolidated School Law, the University Law, and a large number of independent statutes relating to subjects and institutions which either directly or indirectly came within the jurisdiction of the Department of Education." The act reported to the legislature by the Board of Statutory Consolidation was enacted in 1909, being chapter 21 of that year, as chapter 16 of the Consolidated Laws and known as the "Education Law."

In the following year, by L. 1910, ch. 140, which was entitled "An act to amend the Education Law, generally," it was enacted: "Section 1. Chapter 21 of the Laws of 1909, entitled 'An act relating to education, constituting chapter 16 of the consolidated laws,' is hereby amended to read as follows:"

By this legislation the act of 1910 became the Education Law and took the place of the Education Law of 1909. To avoid ambiguity in the citation of, or reference to, the above-mentioned laws, the act of 1910, chapter 140, is cited and referred to as the "Education Law of 1910 (ch. 140)" and the act of 1909, chapter 21, is cited and referred to as the "Education Law of 1909."

CONSOLIDATORS' GENERAL NOTE ON EDUCATION LAW OF 1909

(*Printed in their report of* 1907 *at p.* 1154)

This chapter is the result of a careful examination of all statutes on the subject of education enacted during the one hundred and thirty years of legislation, beginning with the first chapter enacted in 1777 and ending with the last of 1907.

The law as presented herewith is a consolidation in the main of live provisions of the Consolidated School Law and the University Law, as amended, together with a large number of independent general statutes relating to institutions which are directly or indirectly under the supervision of the Education Department; also independent statutes relating to institutions, law libraries for instance, which while not directly of an educational character relate so closely to the subject as readily to fall within the general scheme of the chapter.

The schedule of repeals to the law contains all statutes which relate to the subjects treated in the body of the law heretofore repealed either specifically or by construction; or recommended for repeal because inoperative, superseded, or consolidated in the law.

Among the topics treated are school districts and school neighborhoods with their formation, dissolution and the duties and responsibilities of their officers; school taxes, bonds and moneys; trusts for schools, including gospel and school lots; fines, penalties and forfeitures; compulsory education, including that of Indians; teachers, their contracts and duties; text-books; contract system; training classes and schools with teachers' institutes; normal schools; the flag; fire drills; arbor day; physiology and hygiene; special instruction by graphic illustration; drawing and vocal music; industrial training; kindergartens; orphan schools; Indian schools and the compulsory education of Indian children; schools for the instruction of deaf-mutes and the blind; colored schools; school census; libraries; the University and regents; Cornell University; New York State School of Agriculture at St. Lawrence University.

Made up as it is of independent general statutes enacted during different legislative periods and under widely different conditions, this chapter, read as a general law, necessarily presents many rough places and many incongruities which could be eliminated by revision. Much might also be accomplished in the way of shortening and simplifying, but the Board is restricted in scope by the act which created it, and no attempt has been made to do more than to present the statute law as it exists to-day with such elimination as could be made without the risk of revision.

EDUCATION LAW

LAWS 1910, CHAP. 140

AN ACT to amend the education law, generally.

Became a law April 22, 1910, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter twenty-one of the laws of nineteen hundred and nine, entitled "An act relating to education, constituting chapter sixteen of the consolidated laws," is hereby amended to read as follows:

EDUCATION LAW

CHAPTER 16 OF THE CONSOLIDATED LAWS

Article 1. Short title and definitions (§§ 1, 2).
2. Education department (§§ 20–27).
3. *University (§§ 40–77).
4. Commissioner of education (§§ 90–99).
5. School districts (§§ 120–154).
6. School neighborhoods (§§ 170–172).
6-a. Temporary school districts (§§ 175–179).
6-b. Central rural schools (§§ 180–186).
7. District meetings (§§ 190–207).
8. School district officers; general provisions (§§ 220–236).
9. District clerk, treasurer, collector (§§ 250–257).
10. Trustees (§§ 270–285).
11. Boards of education (§§ 300–328).
12. Town clerks (§§ 340, 341).
13. Supervisors (§§ 360–365).
14. District superintendent of schools; his election, powers and duties (§§ 380–398).
15. Assessment and collection of taxes (§§ 410–440).
16. School buildings and sites (§§ 450–467).
17. School district bonds (§ 480).
18. School moneys (§§ 490–502).
19. Trusts for schools; gospel and school lots (§§ 520–528).
20. Teachers and pupils (§§ 550–567).
20-a. Medical inspection (§§ 570–577).
21. Contract system (§§ 580–586).
22. General industrial schools, trade schools, and *school of agriculture, mechanic arts and home making (§§ 600–*606).
22-a. Farm school in counties (§§ 610–619-b).
23. Compulsory education (§§ 620–636).
24. School census (§§ 650–654).
25. Text-books (§§ 670–673).
26. Physiology and hygiene (§§ 690, 691).

* So in original.

Article 26-a. Discipline and physical training (§§ 695–697).
27. The flag (§§ 710–713).
28. Fire drills (§§ 730–733).
29. Arbor day (§§ 750–752).
30. Teachers' institute (§§ 770–775).
31. Training classes (§§ 790–794).
32. Normal schools; state normal college (§§ 810–834).
33. Fines; penalties; forfeitures and costs (§§ 850–862).
34. Appeals or petitions to commissioner of education (§§ 880–882).
35. Orphan schools (§§ 900–902).
36. Schools for colored children (§§ 920–922).
37. Indian schools (§§ 940–954)..
38. Instruction of deaf mutes and of the blind (§§ 970–980).
39. New York state school for the blind (§§ 990–1011).
40. Cornell university (§§ 1030–1039).
41. State school of agriculture at Saint Lawrence university (§§ 1050–1053).
41-a. State school of agriculture and domestic science at Delhi (§§ 1055–1060).
42. State school of agriculture at Alfred university (§§ 1070–1072).
42-a. State school of agriculture at Cobleskill (§§ 1075–1078).
43 State school of agriculture at Morrisville (§§ 1090–1094).
43-a. Retirement fund for teachers in state institutions (§§ 1095–1099-a).
43-b. Teachers' retirement fund for public school teachers (§§ 1100–1109-c).
44. Libraries (§§ 1110–1141).
45. Court libraries (§§ 1160–1182).
45-a. State school of agriculture on Long Island (§§ 1185–1188).
46. Divisions of history and public records (§§ 1190–1198).
46. The New York-American veterinary college (§§ 1190–1193).
47. Laws repealed; saving clause; when to take effect (§§ 1200–1202).

ARTICLE 1

Short Title and Definitions

Section 1. Short title.
2. Definitions.

§ 1. Short title. This chapter shall be known as the "Education Law."

The original Education Law was L. 1894, ch. 556, known as the Consolidated School Law. This statute was followed by the Consolidated Education Law, chapter 16 of the Consolidated Laws, and being L. 1909, ch. 21. The last-mentioned law was amended "to read as follows," by L. 1910, ch. 140.

Federal legislation relating to education.—*The United States office of education* is a bureau in the Interior Department under the direction of a commissioner of education. It is made the duty of the office of education "to collect statistics and facts showing the condition and progress of education in the several States and Territories, and to diffuse such information respecting the organization and management of schools and school-systems, and methods of teaching, as shall aid the people of the United States in the establishment and maintenance of efficient school-systems, and otherwise promote the cause of education throughout the country." See U. S. R. S. secs. 516–519 and the Act of Congress of May 28, 1896, ch. 252, 29 U. S. Stat. L. 171, Fed. Stat. Ann. tit. Education.

Military instruction in schools and colleges under army officers detailed for that purpose is provided for by U. S. R. S. secs. 1225, 1260 and a number of amendatory Acts. See Fed. Stat. Ann. tit. Education.

Nautical instruction in schools and colleges under officers of the navy and marine corps, and the loan of naval equipment to certain military schools are provided for by a provision in the Navy Appropriation Act of March 2, 1895, ch. 186, 28 U. S. Stat. L. 826, and by the Act of Feb. 26, 1879, ch. 105, 20 U. S. Stat. L. 322; Act of March 3, 1901, ch. 363, 31 U. S. Stat. L. 1440; Act of March 4, 1911, ch. 265, 36 U. S. Stat. L. 1353. See Fed. Stat. Ann. tit. Education.

Agricultural and mechanical colleges of the states are aided by appropriations of land and money as provided by Acts of Congress July 2, 1862, ch. 130; July 23, 1866, ch. 209; Aug. 30, 1890, ch. 841; March 4, 1907, ch. 2907; May 8, 1914, ch. 79. See Fed. Stat. Ann. tit. Education.

Education of the blind. The Act of March 3, 1879, ch. 186, 20 U. S. Stat. L. 467, and a provision in the Appropriation Act of June 25, 1906, ch. 3536, 34 U. S. Stat. L. 460, relate to a permanent fund established to aid the education of the blind. See Fed. Stat. Ann. tit. Education.

Other provisions of federal statutes relate to the marine biological station, the use of government literary and scientific collections, the study of effects of alcoholic drinks and narcotics, and Howard University. See Fed. Stat. Ann. tit. Education.

Education Law as continuation of prior statutes.—The Education Law as it now stands is simply a continuation of the law as it existed prior to the Education Law of 1909. "No inconsistencies between these statutes was thought to exist formerly, and the recent endeavor of the legislature to collate and consolidate our statutory law has in no wise operated to change their status." Western N. Y. Inst., etc., v. Broome Co., (1913) 82 Misc. 63, 143 N. Y. S. 241.

§ 2. **Definitions.** As used in this chapter, the following specified terms mean as here defined.

1. *Academy.* The term "academy" means an incorporated institution for instruction in secondary education, and such high schools, academic departments in union schools and similar unincorporated schools as are admitted by the regents to the university as of academic grades.

This subdivision in the Education Law of 1909 had the words "in higher branches of education" instead of the words "in secondary education."

2. *College.* The term "college" includes universities and other institutions for higher education authorized to confer degrees.

3. *University.* The term "university" means the university of the state of New York.

4. *Regents.* The term "regents" means board of regents of the university of the state of New York.

5. *Commissioner.* The term "commissioner" means commissioner of education.

6. *School commissioner.* The term "school commissioner" means the local officer provided for in article fourteen.

7. *Secondary education.* The term "secondary education" means instruction of academic grades, between the elementary grades and the college or university.

This subdivision was in the Education Law of 1909, but it was stricken out by L. 1909, ch. 240, § 20. It was, however, re-enacted in the Education Law of 1910 (ch. 140).

8. *Higher education.* The term "higher education" means education in advance of secondary education, and includes the work of colleges, universities, professional and technical schools, and educational work connected with libraries, museums, university and educational extension courses and similar agencies.

This subdivision was in the Education Law of 1909 and contained the same language. Changes were made in the subdivision by L. 1909, ch. 240, the words "common elementary branches" being substituted for "secondary education" and the word "academies" was inserted before the word "colleges," but the Education Law of 1910 (ch. 140) changed the subdivision to read as in the Education Law of 1909.

9. *Trustee.* The term "trustees," when not used in reference to a school district, includes directors, managers or other similar members of the governing board of an educational institution.

10. *Parental relation.* The term " persons in parental relation " to a child includes the parents, guardians or other persons, whether one or more, lawfully having the care, custody or control of such child.

11. *Compulsory school ages.* The term " child of compulsory school age " means any child between seven and sixteen years of age lawfully required to attend upon instruction.

This subdivision does not appear in the Education Law of 1909.

12. *School authorities.* The term " school authorities " means the trustees, or board of education, or corresponding officers, whether one or more, and by whatever name known, of a city, or school district however created.

13. *School officer.* The term " school officer " means a clerk, collector, or treasurer of any school district; a trustee or member of a board of education or other body in control of the schools by whatever name known in a union free school district or in a city; a superintendent of schools; a truant officer; a school commissioner; or other elective or appointive officer in a school district or city whose duties generally relate to the administration of affairs connected with the public school system.

This subdivision is not in the Education Law of 1909.

14. *Board of education.* The term " board of education " shall include by whatever name known the governing body charged with the general control, management and responsibility of the schools of a union free school district or of a city.

This subdivision is new. It is not found in the Education Law of 1909.

This section came from University Law, L. 1892, ch. 378, § 2; Consolidated School Law, L. 1894, ch. 556, tit. 16, § 2, part as added by L. 1894, ch. 671, and amended by L. 1903, ch. 459, § 1.

The report of the Board of Statutory Consolidation (1907) at page 1156 contains a note on this section as follows: " ' Institution ' substituted for ' school ' as being more descriptive of an academy than the latter term. ' Commissioner of education ' substituted for ' superintendent of public instruction ' because of the abolition of the latter office and creation of the former by L. 1904, ch. 40. The definition of ' school commissioner ' is introduced to prevent confusion with the term commissioner as defined in the preceding paragraph. The definition of ' secondary education ' is introduced to conform to the use of the term ' secondary ' employed in L. 1904, ch. 40, § 4, consolidated as § 1080. The definition of ' higher education ' has been changed to conform to the introduction of the term secondary education thereby excluding the work of academies from the definition of higher education as employed in L. 1892, ch. 378, § 2. New matter ' when not used in

reference to a school district' inserted because term 'trustees,' as defined in this section, refers to institutions within the University of the State of New York, and since the Consolidated School Law and the University Law are consolidated it is necessary to restrict the term 'trustees' under the definition given to institutions in the university."

Meaning of word "school": see note Ann. Cas. 1912B 1353.

"Public school" as used in the Act relating to Cornell University.— Under L. 1865, ch. 585, § 9, as amended by L. 1872, ch. 654, and L. 1886, ch. 614, which vested in the school commissioner of each county the power "to select the 'best scholar from each academy and each public school of their respective counties or cities as candidates'" for the free scholarship in Cornell University provided for therein, it was held that the words "public school" embraced "common" schools only and did not include "normal" schools since the object of the statute clearly was "to furnish an incentive to pupils in the academies and public schools to strive for as high a degree of scholarship as those schools would afford." People v. Crissey, (1887) 45 Hun 19, 9 N. Y. St. Rep. 681.

ARTICLE 2*

EDUCATION DEPARTMENT

Section 20. Education department.
21. Divisions of department.
22. Assistant commissioners.
23. Other officers and employees.
24. Removals and suspensions.
25. Joint seal.
26. Reports to the legislature.
27. State education building.

§ 20. Education department. The education department is hereby continued and shall be under the legislative direction of the regents and the executive direction of the commissioner of education, who is made, by section ninety-four of this act, the chief executive officer of the state system of education and of the regents. The said department is charged with the general management and supervision of all public schools and all of the educational work of the state, including the operations of the university of the state of New York.

Section 20 of the Education Law of 1909 related to the formation of "school districts" and that subject is now treated in article 5.

Legislature to provide for free common schools: see CONSTITUTION, art. IX, § 1.

Prohibition against excluding certain persons from schools: see PENAL LAW, § 514.

§ 21. Divisions of department. By concurrent action of the regents and the commissioner of education the department may be divided into divisions. By like action new divisions may be created and existing divisions may be consolidated or abolished, and the administrative work of the department assigned to the several divisions.

Section 21 of the Education Law of 1909 related to the formation, alteration and dissolution of certain joint districts and the subject is now treated in article 5.

§ 22. Assistant commissioners. The commissioner of education shall appoint, subject to the approval of the regents, such

*Article 2 of the Education Law of 1909, "School Districts," is now article 5.

assistant commissioners as he shall deem necessary for the proper organization and general classification of the work of the department, and assign to such assistant commissioners the work which shall be under their respective supervision.

Section 22 of the Education Law of 1909 is now covered by section 127.

§ 23. Other officers and employees. The commissioner of education, subject to the approval of the regents, shall have power, in conformity with their rules, to appoint all other needed officers and employees and fix their titles, duties and salaries.

Section 23 of the Education Law of 1909 is now covered by section 123.

§ 24. Removals and suspensions. With the approval of the regents, the commissioner of education may, at his pleasure, remove from office any assistant commissioner, or other appointive officer or employee; and, when the regents are not in session, the commissioner may, during his pleasure, suspend, without salary, any such officer or employee, but not longer than till the adjournment of the succeeding meeting of the regents.

Section 24 of the Education Law of 1909 is now covered by section 124.

§ 25. Joint seal. The regents of the university and the commissioner of education shall together adopt, and may modify at any time, a seal, which shall be used in common as the seal of the education department and of the university; and copies of all records thereof and of all acts, orders, decrees and decisions made by the regents or by the commissioner of education, and of their official papers, and of the drafts or machine copies of any of the foregoing, may be authenticated under the said seal and shall then be evidence equally with and in like manner as the originals.

This is, in part, section 332 of the Education Law of 1909, which was derived from the Consolidated School Law of 1894, ch. 556, tit. 1, § 8.

Seal of public officer or corporation: see GENERAL CONSTRUCTION LAW, § 43.

Seal of state officers: see PUBLIC OFFICERS LAW, § 60.

§ 26. Reports to the legislature. The commissioner of education shall annually prepare a report of the education department, including the university, which shall be transmitted to the legislature over the signatures of the chancellor of the university and of the commissioner of education. At their pleasure, the regents or

the commissioner of education may make other reports and communications to the legislature. Such portions of their annual or other reports or communications as the commissioner or the regents shall desire for such use shall be printed by the state printer as bulletins.

This is a substitute for section 335 of the Education Law of 1909, which came from the Consolidated School Law of 1894, ch. 556, tit. 1, § 9.

Section 26 of the Education Law of 1909 is now covered by sections 128, 133.

§ 27. State education building. After the completion of the state education building, it shall be occupied exclusively by the education department, including the university, with the state library, the state museum, and its other departments, together with such other work with which the commissioner of education and the regents have official relations, as they may, in their discretion, provide for therein; and such building and the offices of such department shall be maintained at state expense.

Section 27 of the Education Law of 1909 is now covered by section 129.

ARTICLE 3*

University of the State of New York

Section 40. Corporate name and objects.
41. Regents.
42. Officers.
43. Meetings and absences.
44. Quorum.
45. Authority to take testimony.
46. Legislative power.
47. General examinations, credentials and degrees.
48. Academic examinations.
49. Admission and fees.
50. Registrations.
51. Supervision of professions.
52. Extension of educational facilities.
53. Departments and their government.
54. State museum; how constituted.
55. Collections made by the staff.
56. Indian collection.
57. Institutions in the university.
58. Visitation and reports.
59. Charters.
60. Provisional charters.
61. Conditions of incorporation.
62. Change of name or charter.
63. Dissolution of educational corporation.
64. Dissolution of incorporated academy by stockholders.
65. Suspension of operations.
66. Prohibitions.
67. Unlawful acts in respect to examinations.
68. Powers of trustees of institutions.
69. Colleges may construct water-works and sewer systems.
70. State scholarships established.
71. Scholarship fund of the University of the State of New York.

* This article was article 43 of the Education Law of 1909. Article 3 of the Education Law of 1909 was "School Neighborhoods."

Section 72. Regents to make rules.
73. List of candidates, award of scholarships.
74. Issuance of scholarship certificate.
75. Effect of certificate; payments thereon.
76. Revocation of scholarship.
77. Limitation as to number of scholarships; courses of study.

§ 40. Corporate name and objects. The corporation created in the year seventeen hundred and eighty-four under the name of the Regents of the university of the state of New York, is hereby continued under the name of the university of the state of New York. Its objects shall be to encourage and promote education, to visit and inspect its several institutions and departments, to distribute to or expend or administer for them such property and funds as the state may appropriate therefor or as the university may own or hold in trust or otherwise, and to perform such other duties as may be intrusted to it.

This section was derived from Education Law of 1909, which came from the University Law of 1892, ch. 378, § 3, and L. 1904, ch. 40, § 4.

Section 40 of the Education Law of 1909 is now covered by section 144.

Constitutional provision as to continuation of regents: see CONSTITUTION, art. IX, § 2.

University of State of New York as wampum keeper of Onondaga Indians: see INDIAN LAW, § 27.

Power to sue.—The University of the State of New York is a corporation having power to sue and be sued and can bring actions generally. Onondaga Nation v. Thacher, (1900) 53 App. Div. 561, 65 N. Y. S. 1014, affirmed (1901) 169 N. Y. 584 mem., 62 N. E. 1098.

§ 41. Regents. The university shall be governed and all its corporate powers exercised by a board of regents whose members shall at all times be three more than the then existing judicial districts of the state. The regents now in office and those hereafter elected shall hold, in the order of their election, for such times that the term of one regent will expire in each year on the first day of April, and his successor shall be chosen in the second week of the preceding February, on or before the fourteenth day of such month. A regent shall be elected by the legislature, on joint ballot of the two houses thereof.

All vacancies in such office, either for full or unexpired terms, shall be so filled that there shall always be in the membership of the board of regents at least one resident of each of the judicial

districts. A vacancy in the office of regent for other cause than expiration of term of service shall be filled for the unexpired term by an election at the session of the legislature immediately following such vacancy, unless the legislature is in session when such vacancy occurs, in which case the vacancy shall be filled by such legislature. There shall be no "ex officio" members of the board of regents. No person shall be at the same time a regent of the university and a trustee, president, principal or any other officer of an institution belonging to the university.

Amended to read as above by L. 1915, ch. 3. This is substantially section 1081 of the Education Law of 1909. The amendment of 1915 substituted the sentence "a regent shall be elected by the legislature, on joint ballot of the two houses thereof," for the sentence "Such election shall be in the manner provided by law for the election of senators in Congress." Section 41 of the Education Law of 1909 is now covered by section 143. Section 1081 of the Education Law of 1909 came from University Law, L. 1892, ch. 378, § 4; L. 1904, ch. 40, §§ 1 and 2. The report of the Board of Statutory Consolidation (1907) at page 1170 refers to certain changes made by the board as follows: "Largely new in phraseology, owing to the important changes made in the organization of the university by L. 1904, ch. 40."

Constitutional provisions as to government of University of State of New York: see CONSTITUTION, art. IX, § 2.

Eligibility of paid instructors.— Paid instructors in an institution under the control of the Regents of the University are not "officers" of such institution and therefore are not disqualified for election as Regents of the University. Op. Atty.-Gen. (1893) 270.

Acceptance of office of regent as vacating incompatible office.— Under the identical phraseology of the former University Law, the attorney-general ruled that a person who was Dean of the Albany Medical College could be elected to and accept the position as a Regent of the University of the State of New York, but that his acceptance of the latter office vacated his position as Dean, since it was well settled that where the holding of two offices by the same person at the same time was forbidden, statutory incompatibility was created, and the acceptance of the second office operated ipso facto to absolutely vacate the first. Op. Atty.-Gen. (1904) 252.

§ 42. Officers. The elective officers of the university shall be a chancellor and a vice-chancellor who shall serve without salary, and such other officers as are deemed necessary by the regents, all of whom shall be chosen by ballot by the regents and shall hold office during their pleasure; but no election, removal or change of salary of an elective officer shall be made by less than six votes in favor thereof. Each regent and each elective officer shall, before entering on his duties, take and file with the secretary of state the oath of office required of state officers.

The chancellor shall preside at all convocations and at all meetings of the regents, and confer all degrees which they shall authorize. In his absence or inability to act, the vice-chancellor, or if he

be also absent, the senior regent present, shall perform all the duties and have all the powers of the chancellor.

This was, substantially, section 1082 of the Education Law of 1909. Section 42 of that law is now covered by section 145. Section 1082 of the Education Law of 1909 came from University Law, L. 1892, ch. 378, § 5 pt. The report of the Board of Statutory Consolidation (1907) at page 1170 refers to certain changes made by the board as follows: "Provisions relating to the secretary of the regents omitted, the duties of the office having been transferred to the commissioner of education by L. 1904, ch. 40, § 4. Change in number of votes necessary for an election made to conform to L. 1905, ch. 161, § 1, consolidated as § 1084."

§ 43. Meetings and absences. The regents may provide for regular meetings, and the chancellor, or the commissioner of education, or any five regents, may at any time call a special meeting of the board of regents and fix the time and place therefor; and at least ten days' notice of every meeting shall be mailed to the usual address of each regent. If any regent shall fail to attend three consecutive meetings, without excuse accepted as satisfactory by the regents, he may be deemed to have resigned and the regents shall then report the vacancy to the legislature, which shall fill it.

This section was derived from Education Law of 1909, § 1083, which came from the University Law, L. 1892, ch. 378, § 6. Section 43 of the Education Law of 1909 is now covered by section 146.

§ 44. Quorum. Seven regents attending shall be a quorum for the transaction of business.

This section was derived from Education Law of 1909, § 1084, the only change being the substitution of the word "seven" for the word "six." That section came from University Law, L. 1892, ch. 378, § 7, as amended by L. 1905, ch. 161, § 1. Section 44 of the Education Law of 1909 is now covered by section 147.

Quorum and majority generally: see GENERAL CONSTRUCTION LAW, § 41.

§ 45. Authority to take testimony. The regents, any committee thereof, the commissioner of education and any assistant commissioner of education may take testimony or hear proofs relating to their official duties, or in any matter which they may lawfully investigate.

This section was derived from Education Law of 1909, § 1085, which came from the University Law, L. 1892, ch. 378, § 8.

Section 45 of the Education Law of 1909 is now covered by section 148.

§ 46. Legislative power. Subject and in conformity to the constitution and laws of the state, the regents shall exercise legislative functions concerning the educational system of the state, determine its educational policies, and except as to the judicial functions of the commissioner of education establish rules for carrying into effect the laws and policies of the state, relating to education, and the powers, duties and trusts conferred or charged upon the university. But no enactment of the regents shall modify in any degree the freedom of the governing body of any seminary for the training of priests or clergymen to determine and regulate the entire course of religious, doctrinal or theological instruction to be given in such institution. No rule by which more than a majority vote shall be required for any specified action by the regents shall be amended, suspended or repealed by a smaller vote than that required for action thereunder.

This section was derived from Education Law of 1909, § 1086, which came from the University Law, L. 1892, ch. 378, § 9, as amended by L. 1895, ch. 57, § 1.
Section 46 of the Education Law of 1909 is now covered by section 149.

§ 47. General examinations, credentials and degrees. The regents may confer by diploma under their seal such honorary degrees as they may deem proper, and may establish examinations as to attainments in learning, and may award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

This section was Education Law of 1909, § 1087, which came from University Law, L. 1892, ch. 378, § 11.
Section 47 of the Education Law of 1909 is now covered by section 150.

§ 48. Academic examinations. The regents shall establish in the secondary institutions of the university, examinations in studies furnishing a suitable standard of graduation therefrom and of admission to colleges, and certificates or diplomas shall be conferred by the regents on students who satisfactorily pass such examinations.

This section was Education Law of 1909, § 1088, which came from University Law, L. 1892, ch. 378, § 12. Section 48 of the Education Law of 1909 is now covered by section 151.

§ 49. Admission and fees. Any person shall be admitted to these examinations who shall conform to the rules and pay the fees prescribed by the regents.

This section was derived from Education Law of 1909, § 1089, which came from the University Law, L. 1892, ch. 378, § 12.

Section 49 of the Education Law of 1909 is now covered by section 152.

Fees of public officers: see PUBLIC OFFICERS LAW, § 60.

The granting of a diploma as a judicial act.— The act of the board of regents in granting a diploma is not subject to "review by any other officer, board or tribunal." Op. Atty.-Gen. (1892) 361.

§ 50. Registrations. The regents may register domestic and foreign institutions in terms of New York standards, and fix the value of degrees, diplomas and certificates issued by institutions of other states or countries and presented for entrance to schools, colleges and the professions in this state.

§ 51. Supervision of professions. Conformably to law the regents may supervise the entrance requirements to and the licensing and practice of the professions of medicine, dentistry, veterinary medicine, pharmacy and optometry, and also supervise the certification of nurses and public accountants.

Supervision of architects by regents: see GENERAL BUSINESS LAW, § 78 et seq.

Review of action of regents.— The action of the regents of the university of the state in considering and denying an application for a license to practice a profession "is not judicial, in the sense that it may be reviewed by a writ of certiorari; but its nature is executive, administrative or ministerial, in the sense in which those terms are used by the courts in determining whether official action is reviewable by certiorari or by mandamus, or whether there may be any review at all." People v. Reid, (1909) 135 App. Div. 89, 119 N. Y. S. 866.

Limitation on supervisory power.— The right of any person to pursue a lawful business in this state is always presumed and recognized, and where there are no words in a statute necessarily or expressly excluding United States citizens from other states and foreign countries, the regents, or any board of examiners appointed by them, have no power to exclude such persons from participating in the benefits of any exemption made or imposed by statute. Op. Atty.-Gen. (1916) 7 St. Dep. Rep. 487.

§ 52. Extension of educational facilities. The regents may extend to the people at large increased educational opportunities and facilities, stimulate interest therein, recommend methods, designate suitable teachers and lecturers, conduct examinations and grant credentials, and otherwise organize, aid and conduct such work. And the regents, and with their approval the commissioner of education, may buy, sell, exchange and receive by

will, or other gift, or on deposit, books, pictures, statuary or other sculptured work, lantern slides, apparatus, maps, globes, and any articles or collections pertaining to or useful in and to any of the departments, divisions, schools, institutions, associations or other agencies, or work, under their supervision, or control, or encouragement, and may lend or deposit any such articles in their custody or control, when or where in their judgment compensating educational usefulness will result therefrom; and may also, from time to time, enter into contracts desirable for carrying into effect the foregoing provisions.

This section was derived from Education Law of 1909, § 1090, which came from the University Law, L. 1892, ch. 378, § 14.

§ 53. Departments and their government. The state library and state museum shall be departments of the university, and the regents may establish such other departments and divisions therein as they shall deem useful in the discharge of their duties.

This section was derived from Education Law of 1909, § 1091, which came from the University Law, L. 1892, ch. 378, § 10.

§ 54. State museum; how constituted. All scientific specimens and collections, works of art, objects of historic interest and similar property appropriate to a general museum, if owned by the state and not placed in other custody by a specific law, shall constitute the state museum, and one of its officers shall annually inspect all such property not kept in the state museum rooms, and the annual report of the museum to the legislature shall include summaries of such property, with its location, and any needed recommendations as to its safety or usefulness. The state museum shall include the work of the state geologist and paleontologist, the state botanist and the state entomologist, who, with their assistants, shall be included in the scientific staff of the state museum.

This section was Education Law of 1909, § 1092, which came from University Law, L. 1892, ch. 378, § 22, as amended by L. 1893, ch. 488, § 1, and L. 1896, ch. 493, § 1.

The report of the Board of Statutory Consolidation (1907) at page 1170 refers to certain changes made by the board as follows: "Words 'unless otherwise provided by law' omitted as unnecessary. All the divisions named are now part of the state museum."

Trustees of public buildings and their powers and duties: see PUBLIC BUILDINGS LAW, §§ 2, 3.

Removal of assistants.— The assistants to officers in the research department of the state museum are not removable by the board of regents. Op. Atty.-Gen. (1893) 206.

§ 55. Collections made by the staff. Any scientific collection made by a member of the museum staff during his term of office shall, unless otherwise authorized by resolution of the regents, belong to the state and form part of the state museum.

This section was Education Law of 1909, § 1093, which came from University Law, L. 1892, ch. 378, § 23.

§ 56. Indian collection. There shall be made, as the Indian section of the state museum, as complete a collection as practicable of the historical, ethnographic and other records and relics of the Indians of the state of New York, including implements or other articles pertaining to their domestic life, agriculture, the chase, war, religion, burial and other rites or customs, or otherwise connected with the Indians of New York.

This section was Education Law of 1909, § 1094 pt., which came from L. 1896, ch. 586, §§ 1, 2.

§ 57. Institutions in the university. The institutions of the university shall include all secondary and higher educational institutions which are now or may hereafter be incorporated in this state, and such other libraries, museums, institutions, schools, organizations and agencies for education as may be admitted to or incorporated by the university. The regents may exclude from such membership any institution failing to comply with law or with any rule of the university.

This section was substantially Education Law of 1909, § 1095. It omits the words "or with any ordinance" occurring in the last sentence of section 1095. That section came from University Law, L. 1892, ch. 378, § 24.

A library corporation as "educational corporation" within meaning of Tax Law. — A library corporation duly incorporated by the regents of the University of the State of New York, though within the class institutions broadly designated as "educational," is not included within the group of "educational corporations" which are exempted by Tax Law, section 221, from the provisions imposing a transfer tax. Matter of Francis, (1907) 121 App. Div. 129, 105 N. Y. S. 643, affirmed (1907) 189 N. Y. 554, 82 N. E. 1126.

§ 58. Visitation and reports. The regents, or the commissioner of education, or their representatives, may visit, examine into and inspect, any institution in the university and any school or institution under the educational supervision of the state, and may require, as often as desired, duly verified reports therefrom giving such information and in such form as the regents or the

commissioner of education shall prescribe. For refusal or continued neglect on the part of any institution in the university to make any report required, or for violation of any law or any rule of the university, the regents may suspend the charter or any of the rights and privileges of such institution.

This section was derived from Education Law of 1909, § 1096, which came from the University Law, L 1892, ch. 378, § 25.

§ 59. Charters. Under such name, with such number of trustees or other managers, and with such powers, privileges and duties, and subject to such limitations and restrictions in all respects as the regents may prescribe in conformity to law, they may, by an instrument under their seal and recorded in their office, incorporate any university, college, academy, library, museum, or other institution or association for the promotion of science, literature, art, history or other department of knowledge, or of education in any way, associations of teachers, students, graduates of educational institutions, and other associations whose approved purposes are, in whole or in part, of educational or cultural value deemed worthy of recognition and encouragement by the university. No institution or association which might be incorporated by the regents under this chapter shall, without their consent, be incorporated under any other general law.

This section was derived from Education Law of 1909, § 1097, which came from the University Law, L. 1892, ch. 378, § 27, as amended by L. 1895, ch. 859, § 2.

Incorporation under other statutes.— Referring to the purpose and effect of the former University Law the Appellate Division in the Fourth Department by Adams, J., said that the legislature having by this statute "provided a complete and harmonious system for the incorporation of colleges and universities, and for their control and government," and having three years later provided in the Membership Corporations Law, L. 1895, ch. 559, for the incorporation of non-stock societies generally, could not "be deemed to have thereby intended to include within the operation of the later law corporations for the creation of which the earlier statute was more particularly designed." Matter of Lampson, (1896) 33 App. Div. 49, 53 N. Y. S. 531, affirmed (1900) 161 N. Y. 511, 56 N. S. 9. And under the provisions of the former University Law the attorney-general ruled that: "Libraries may now be incorporated under the provisions of the University Law, and hence can no longer be organized under the Membership Corporations Law, unless they are organized as stock companies, in which event, they could still be organized under the Business Corporations Law." Op. Atty.-Gen. (1905) 278. The German-American School Association, a proposed corporation, having for its objects the preservation of the German language in the city of New York by procuring and providing free tuition in the German language for children, particularly those of German extraction, is not entitled to be incorporated under the Membership Corporations Law, but is an educational institution such as is

required to incorporate under this section. Op. Atty.-Gen. (1911) 427. A certificate of incorporation which includes some primary educational features can be granted pursuant to the Membership Corporations Law with the consent of the board of regents, and the approval of a justice of the Supreme Court and the state board of charities. Op. Atty.-Gen. (1915) 300, 5 St. Dep. Rep. 456.

Power to issue and taxation of stock.— "Corporations formed for educational purposes must make their application for incorporation to the board of regents. The charter granted by such board may contain such provisions for the issuance of stock and to such an amount as such board may deem advisable, with such other limitations and restrictions as such board may prescribe in conformity to the Stock Corporation Law." Op. Atty.-Gen. (1908) 344. And where such a corporation is authorized to issue stock upon which may be distributed to the holders thereof dividends or shares of the surplus profits, it is a stock corporation, as that term is defined by section 3 of the General Corporation Law as used in section 180 of the Tax Law, and is consequently subject to the tax imposed by the later section. Op. Atty.-Gen. (1910) 548.

Incorporation of trustees of existing corporation.—Although the board of regents have no authority to grant a charter for educational purposes to a hospital or dispensary already existing as a corporation, there is "no legal objection to the incorporation of the individuals constituting hospital or dispensary corporations for the maintenance of schools under charters which will secure the control of the management of the school by trustees, who are also trustees of the institutions already organized." Op. Atty.-Gen. (1894) 377.

Degree conferring power.— Under this section the board of regents may grant charters to colleges without giving them the right to confer degrees. Op. Atty.-Gen. (1893) 123. See also § 61, infra.

The use of the word "university" or "college."— "It is apparent that the unrestricted use of the word 'university' or 'college' as a part of the corporate name of a company created pursuant to the Business Corporations Law would be apt to lead to abuses and deception." Op. Atty.-Gen. (1907) 281. And a corporation should not therefore use the word "university" without the permission of the board of regents. Op. Atty.-Gen. (1908) 344. See also § 66, infra.

§ 60. Provisional charters. On evidence satisfactory to the regents that the conditions for an absolute charter will be met within a prescribed time, they may grant a provisional charter which shall be replaced by an absolute charter when the conditions have been fully met; otherwise, after the specified time, on notice from the regents to this effect, the provisional charter shall terminate and become void and shall be surrendered to the regents. No such provisional charter shall give power to confer degrees.

This section was Education Law of 1909, § 1098, which came from University Law, L. 1892, ch. 378, § 28. Section 60 of the Education Law of 1909 is now covered by section 170.

§ 61. Conditions of incorporation. No institution shall be given power to confer degrees in this state unless it shall have resources of at least five hundred thousand dollars; and no institution for higher education shall be incorporated without suitable

provision, approved by the regents, for educational equipment and proper maintenance. No institution shall institute or have any faculty or department of education in any place or be given power to confer any degree not specifically authorized by its charter; and no corporation shall, under authority of any general act, extend its business to include establishing or carrying on any educational institution or work, without the consent of the board of regents.

This section was derived from Education Law of 1909, § 1099, which came from the University Law, L. 1892, ch. 378, § 28. Section 61 of the Education Law of 1909 is now covered by section 171.

Extension of provisional charter.— Where an institution which has received a provisional charter makes an application to have such charter, which included degree conferring powers, extended, it is entitled only to a provisional charter without degree conferring powers unless the regents are satisfied that it will be able to comply with the provisions of this section with regard to the amount of resources required. Op. Atty.-Gen. (1893) 206. See also § 60, supra.

§ 62. Change of name or charter. 1. The regents may, at any time, for sufficient cause by an instrument under their seal and recorded in their office, change the name, or alter, suspend or revoke the charter or incorporation of any institution which they might incorporate under section fifty-nine, if subject to their visitation or chartered or incorporated by the regents or under a general law; provided that, unless on unanimous request of the trustees of the institution, no name shall be changed and no charter shall be altered, nor shall any rights or privileges thereunder be suspended or repealed by the regents, till they have mailed to the usual address of every trustee of the institution concerned at least thirty days' notice of a hearing when any objections to the proposed change will be considered, and till ordered by a vote at a meeting of the regents for which the notices have specified that action is to be taken on the proposed change.

2. Any notice to a trustee whose address is not readily ascertainable, may be mailed to him in care of the institution.

This section was derived from Education Law of 1909, § 1100, which came from the University Law, L. 1892, ch. 378, § 29, as amended by L. 1895, ch. 859, § 3. Section 62 of the Education Law of 1909 is now covered by section 172.

What charters may be altered.—The attorney-general has ruled that notwithstanding the provisions of this section the regents of the university have no authority to alter, suspend or revoke the charter of any institution which they might have incorporated. Such, he says, could not have been the intention of the legislature and consequently the number of trustees of such a corporation cannot be changed and its charter in that respect altered by the

regents unless it has been reincorporated by them, in pursuance of the provisions of the statute. Op. Atty.-Gen. (1905) 278.

How the "unanimous request" may be given.— The unanimous request required by this section in order to change the name or to alter, revoke or suspend the charter of an institution may be given by the trustees in writing without holding a meeting. Op. Atty.-Gen. (1892) 253.

§ 63. [Dissolution of educational corporation.] Whenever any educational corporation subject to the visitation of the regents, chartered or incorporated by the regents or under a general law, shall cease to act in its corporate capacity, or shall have its charter revoked by the regents, it shall be lawful for the supreme court of this state, upon the application of the majority of the trustees thereof, in case said court shall deem it proper so to do, to order and decree a dissolution of such educational corporation, and for that purpose to order and direct a sale and conveyance of any and all property belonging to such corporation, and after providing for the ascertaining and payment of the debts of such corporation, and the necessary costs and expenses of such sale and proceedings for dissolution, so far as the proceeds of such sale shall be sufficient to pay the same, such court may order and direct any surplus of such proceeds remaining after payment of such debts, costs and expenses, to be devoted and applied to any such educational, religious, benevolent, charitable or other objects or purposes as the said trustees may indicate by their petition and the said court may approve.

Such application to said court shall be made by petition, duly verified by said trustees, which petition shall state the particular reason or causes why such sale and dissolution are sought; the situation, condition and estimated value of the property of said corporation, and the particular object or purposes to which it is proposed to devote any surplus of the proceeds of such property; and such petition shall, in all cases, be accompanied with proof that notice of the time and place of such intended application to said court has been duly published once in each week for at least four weeks successively, next preceding such application, in a newspaper published in the county where such corporation is located.

In case there shall be no trustees of such educational corporation residing in the county in which such corporation is located, such application may be made and such proceedings taken by the board

of regents of the university of the state of New York. This section shall not apply to the dissolution of an academy incorporated under the laws of this state and having a capital stock.

New. Added by L. 1911, ch. 860, which repealed Education Law of 1910, ch. 140, § 63, which related to "Dissolution and rechartering" and was derived from the Education Law of 1909, which came from the University Law, L. 1892, ch. 378, § 30, as amended by L. 1903, ch. 289.

§ 64. Dissolution of incorporated academy by stockholders. 1. *Meeting to consider application for dissolution, when to be called.* The trustees of any academy incorporated under the laws of this state and having a capital stock, may, and upon the written application of any person owning or lawfully holding one-third of the said capital stock, must call a general meeting of the stockholders of said academy, as hereinafter provided, for the purpose of determining whether or not such incorporated academy shall surrender its charter and be dissolved and its property distributed among the stockholders thereof.

2. *Notice thereof, how published.* The notice for such general meeting must state the object thereof and be subscribed by the chairman or other acting presiding officer and the secretary or acting secretary of the said corporation or board of trustees; it shall be published once a week for three successive weeks prior to such meeting in a daily or weekly newspaper published in the place where the said academy is located; or if there be no such paper, then in a daily or weekly paper published within the county, if there be one, or, if not, in an adjoining county to that in which such academy is located.

3. *Vote requisite for surrender of charter and dissolution.* Whenever, at a meeting of the stockholders called as hereinbefore provided, any person or persons holding or qualified to vote upon a majority of the capital stock of such incorporated academy shall vote to surrender the charter thereof and to dissolve the corporation, the trustees of such academy, or a majority of them, must make and sign a certificate of such action, cause the same to be properly attested by the officers of the corporation and file the same, together with a copy of the published notice for the meeting at which such action was taken, and due proof of the publication thereof, in the office of the board of regents of the university of the state of New York and thereupon, if the said proceedings shall have been regularly conducted as above prescribed, the

charter of said corporation shall be deemed to be surrendered and the said corporation dissolved.

4. *Powers of trustees of academies upon dissolution.* Upon the dissolution of such incorporated academy, as herein provided, the trustees thereof shall forthwith become and be trustees of the creditors and stockholders of the corporation dissolved. They shall have full power to settle the affairs of the said corporation; to collect and pay the outstanding debts; to sue for and recover debts and property thereof by the name of the trustees of such corporation; to sell and dispose of the property thereof, at public or private sale, and to divide among the stockholders the moneys or other property that shall remain after the payment of debts and necessary expenses.

5. *Notice to creditors to present claims, how published.* The said trustees may, after the dissolution of the said corporation, insert in a newspaper published in the place where the said academy is located, or if there be none such then in a newspaper published within the county, if there be one, or, if not, in an adjoining county, a notice once in each week for three successive months, requiring all persons having claims against the said corporation dissolved to present the same with proof thereof to the said trustees, at the place designated in such notice, on or before a day therein named which shall be not less than three months from the first publication thereof. In case any action shall be brought upon any claim which shall not have been presented to the said trustees within three months from the first publication of such notice, the said trustees shall not be chargeable for any assets, moneys or proceeds of the said corporation dissolved, which they may have paid in satisfaction of other claims against the said corporation, or in making distribution to the stockholders thereof, before the commencement of such action.

6. *Surrender of stock scrip, upon distribution to shareholders.* Upon the distribution by the said trustees of assets or property, or the proceeds thereof, of the dissolved corporation among its stockholders the said trustees may require the certificate of ownership of capital stock, if such have been issued, standing in the name of any stockholder claiming a distributive share, or under whom such share is claimed, to be surrendered for cancellation by such stockholder or person claiming the said share; in the event of the non-production of any such certificate, the said trustees may

require satisfactory proof of the loss thereof, or of any other cause for such non-production, together with such security as they may prescribe, before payment of the distributive share to which the person claiming upon such share of stock may appear to be entitled.

7. *Notice of distribution, to absent and unknown shareholders.* In case the said trustees upon such distribution by them of assets or property, or the proceeds thereof, of the dissolved corporation among its stockholders, shall be unable to find any of the said stockholders or the persons lawfully owning or entitled to any portion of the said capital stock, they shall give notice in the manner hereinabove provided for calling the general meeting of stockholders, of such distribution, to the persons in whose names such stock shall stand upon the books of the said corporation, requiring them to appear at a time and place designated, to receive the portion of such assets or property to which they may be entitled; in case of the failure of any such persons to so appear, it shall be lawful for the said trustees to pay over and deliver to the county treasurer of the county wherein such academy was located, or to any trust company or other corporation located within such county and authorized to receive moneys on deposit under order or judgment of a court of record, the proportion of the assets, property or proceeds aforesaid which such non-appearing stock bears to the whole stock; the said trustees shall also deliver therewith a list of the persons entitled to receive the same, together with the separate amounts to which they shall be severally entitled.

8. *Liability of trustees, when to cease.* Upon the payment and discharge of the debts and obligations of the corporation dissolved, as hereinbefore provided, and the distribution of its assets, property and proceeds among the stockholders thereof, and due provision made, as hereinabove prescribed, for the interests of non-appearing stockholders and such as can not be found, the said trustees shall become and be relieved and discharged from further duty, liability and responsibility by reason of their relation to the said corporation, or towards the stockholders thereof.

9. *Duties and liabilities of custodians.* Any county treasurer, trust company or other corporation to whom assets, property or proceeds shall be delivered as herein provided, shall hold the same in trust for the persons designated and entitled to receive it; and

upon receiving satisfactory proof of the right and title thereto, or upon the order of any court of record competent to adjudicate thereupon, shall pay over and deliver to any persons entitled to receive the same the portion of such proceeds, property or assets to which they shall be entitled.

This section was Education Law of 1909, § 1102, which came from L. 1889, ch. 25, §§ 1, 9.

§ 65. Suspension of operations. If any institution in the university shall discontinue its educational operations without cause satisfactory to the regents, it shall surrender its charter to them, subject, however, to restoration whenever arrangements satisfactory to the regents are made for resuming its work.

This section was Education Law, § 1103, which came from University Law, L. 1892, ch. 378, § 31.

§ 66. Prohibitions. 1. No individual, association or corporation not holding university or college degree-conferring powers by special charter from the legislature of this state or from the regents, shall confer any degrees, or transact business under or in any way assume the name university or college, till written permission to use such name shall have been granted by the regents under their seal.

2. No persons shall buy, sell or fraudulently or illegally make or alter, give, issue or obtain any diploma, certificate or other instrument purporting to confer any literary, scientific, professional or other degree, or to constitute any license, or to certify to the completion in whole or in part of any course of study in any university, college, academy or other educational institution.

3. No diploma or degree shall be conferred in this state except by a regularly organized institution of learning meeting all requirements of law and of the university, nor shall any person with intent to deceive, falsely represent himself to have received any such degree or credential, nor shall any person append to his name any letters in the same form registered by the regents as entitled to the protection accorded to university degrees, unless he shall have received from a duly authorized institution the degree or certificate for which the letters are registered. Counterfeiting or falsely or without authority making or altering in a material respect any such credential issued under seal shall be a

felony; any other violation of this section shall be a misdemeanor; and any person who aids or abets another, or advertises or offers himself to violate the provisions of this section, shall be liable to the same penalties.

This section was derived from the Education Law of 1909, § 1104, which came from the University Law, L. 1892, ch. 378, § 33, as amended by L. 1895, ch. 859, § 4.

Alumni corporations: see MEMBERSHIP CORPORATIONS LAW, § 220 et seq.

The use of the name "college" or "university."— Corporations organized and existing under L. 1875, ch. 176, which permitted a certain number of citizens to incorporate "a musical college, school or academy within their state for the education of persons in the lower and higher branches of music," had the power to transact business under the name "college" and to confer degrees without permission from the regents of the university. Op. Atty.-Gen. (1905) 347. Since, however, "it is apparent that the unrestricted use of the word 'university' or 'college' as a part of the corporate name of a company created pursuant to the Business Corporations Law would be apt to lead to abuses and deception," [Op. Atty.-Gen. (1907) 281] a corporation will not now be permitted to use the word "university" in its title without permission of the regents. Op. Atty.-Gen. (1908) 344. But subdivision 1 of this section does not apply to a corporation, organized under the Business Corporations Law, which is to conduct a cafe or restaurant under the name of "College Inn," and is not to engage in any educational pursuits. Op. Atty.-Gen. (1911) 297.

The necessity of approval of name by regents.— Under the similar phraseology of section 35 of the former University Law of 1892, the attorney-general ruled that the secretary of state should not have filed the certificate of a foreign corporation doing business under the name "International College of Languages" where the use of the title had not first been approved by the regents. Op. Atty.-Gen. (1906) 403.

The power to confer degrees.— It is not necessarily true that every college which has received a charter from the board of regents has the right to confer degrees. Op. Atty.-Gen. (1893) 123.

Meaning of word "regularly" in subdivision 3.— The word "regularly" as used in subdivision 3 of this section does not have reference only to the regularity of the sessions and continuity of the course of study at the school or college, but has a much broader meaning and is used in the sense of "lawfully" or "legally." People v. Reid, (1909) 135 App. Div. 89, 119 N. Y. S. 866.

§ 67. Unlawful acts in respect to examinations.

A person who shall

1. Personate or attempt or offer to personate another person in taking, or attempting or offering to take an examination held in accordance with this chapter or with the rules of the university; or

2. Take, or attempt or offer to take, such an examination in the name of any other person; or

3. Procure any other person to falsely personate him or to take, or attempt or offer to take, any such examination in his name; or

4. Have in his possession question papers to be used in any such examination, when not contained in their sealed wrappers, or copies of such papers or questions, at any time prior to the date set for such examination, unless duly authorized by the regents or the commissioner of education; or

5. Sell or offer to sell question papers or any questions prepared for use in any examination held in accordance with this chapter or with the rules of the university; or

6. Use in any such examination any question papers or questions, or secure or prepare the answers to such questions prior to the time set for the examination; or

7. Transmit to the state education department answers to questions used in any such examination which are prepared or written outside of the period of examination, or alter any such answers after such period is closed; or

8. Otherwise secure or attempt to secure the record of having passed such examination in violation of the university rules; is guilty of a misdemeanor and upon conviction thereof shall be punished for a first offense by a fine of not less than fifty dollars or imprisonment for not less than thirty days, or by both such fine and imprisonment, and for a second offense by a fine of not less than two hundred and fifty dollars, or imprisonment for not less than six months or by both such fine and imprisonment.

False representation and impersonation in civil service examination: see CIVIL SERVICE LAW, § 24.

§ 68. Powers of trustees of institutions. The trustees of every corporation created by the regents, unless otherwise provided by law or by its charter, may:

1. *Number and quorum.* Fix the term of office and number of trustees, which shall not exceed twenty-five, nor be less than five. If any institution has more than five trustees, the body that elects, by a two-thirds vote after notice of the proposed action in the call for a meeting, may reduce the number to not less than five by abolishing the office of any trustee which is vacant and filing in the regents' office a certified copy of the action. A majority of the whole number shall be a quorum.

2. *Executive committee.* Elect an executive committee of not less than five, who, in intervals between meetings of the trustees, may transact such business of the corporation as the trustees may authorize, except to grant degrees or to make removals from office.

3. *Meetings and seniority.* Meet on their own adjournment or when required by their by-laws, and as often as they shall be summoned by their chairman, or in his absence by the senior trustee, on written request of three trustees. Seniority shall be according to the order in which the trustees are named in the charter or subsequently elected. Notice of the time and place of every meeting shall be mailed not less than five nor more than ten days before the meeting to the usual address of every trustee.

4. *Vacancies and elections.* Fill any vacancy occuring in the office of any trustee by electing another for the unexpired term. The office of any trustee shall become vacant on his death, resignation, refusal to act, removal from office, expiration of his term, or any other cause specified in the charter. If any trustee shall fail to attend three consecutive meetings without excuse accepted as satisfactory by the trustees, he shall be deemed to have resigned, and the vacancy shall be filled. Any vacancy in the office of trustee continuing for more than one year, or any vacancy reducing the number of trustees to less than two-thirds of the full number may be filled by the regents. No person shall be ineligible as a trustee by reason of sex.

5. *Property holding.* Take and hold by gift, grant, devise or bequest in their own right or in trust for any purpose comprised in the objects of the corporation, such additional real and personal property, beyond such as shall be authorized by their charter or by special or general statute, as the regents shall authorize within one year after the delivery of the instrument or probate of the will, giving, granting, devising or bequeathing such property, and such authority given by the regents shall make any such gift, grant, devise or bequest operative and valid in law. Any grant, devise or bequest shall be equally valid whether made in the corporate name or to the trustees of a corporation, and powers given to the trustees shall be powers of the corporation.

6. *Control of property.* Buy, sell, mortgage, let and otherwise use and dispose of its property as they shall deem for the best interests of the institution; and also to lend or deposit, or to receive as a gift, or on loan or deposit, literary, scientific or other articles, collections, or property pertaining to their work; and such gifts, loans or deposits may be made to or with the university or any of its institutions by any person, or by legal vote of any board of trustees, corporation, association or school district, and

any such transfer of property, if approved by the regents, shall during its continuance, transfer responsibility therefor to the institution receiving it, which shall also be entitled to receive any money, books or other property from the state or other sources to which said corporation, association or district would have been entitled but for such transfer.

7. *Officers and employees.* Appoint and fix the salaries of such officers and employees as they shall deem necessary, who, unless employed under special contract, shall hold their offices during the pleasure of the trustees; but no trustee shall receive compensation as such.

8. *Removals and suspensions.* Remove or suspend from office by vote of a majority of the entire board any trustee, officer or employee engaged under special contract, on examination and due proof of the truth of a written complaint by any trustee, of misconduct, incapacity or neglect of duty; provided, that at least one week's previous notice of the proposed action shall have been given to the accused and to each trustee.

9. *Degrees and credentials.* Grant such degrees and honors as are specifically authorized by their charter, and in testimony thereof give suitable certificates and diplomas under their seal; and every certificate and diploma so granted shall entitle the conferee to all privileges and immunities which by usage or statute are allowed for similar diplomas of corresponding grade granted by any institution of learning.

10. *Rules.* Make all by-laws and rules necessary and proper for the purposes of the institution and not inconsistent with law or any rule of the university; but no rule by which more than a majority vote shall be required for any specified action by the trustees shall be amended, suspended or repealed by a smaller vote than that required for action thereunder.

This section was Education Law of 1909, § 1105, which came from University Law, L. 1892, ch. 378, § 34, as amended by L. 1901, ch. 592, § 1, and consolidated therewith; L. 1846, ch. 74, § 1.

Quorum and majority generally: see GENERAL CONSTRUCTION LAW, § 41.

Quorum of regents: see infra, § 44.

Creation of vacancy by resignation.— The resignation of a trustee of a college takes effect from the time the same is filed with the proper officer, and it is not necessary that the trustees meet and accept the resignation, as the vacancy is created as soon as it is so filed. Op. Atty.-Gen. (1893) 141.

Power to convey property.—Any institution subject to the visitation of the board of regents has authority to convey its property. Prior to such conveyance, however, it is advisable to obtain an order of the court directing the same. Op. Atty.-Gen. (1893) 298.

Review of trustees' discretion as to conferring degrees.— "The faculties of educational institutions have power to confer degrees, and the teachers of schools having the right to recommend to the regents of the university students deemed to be worthy of degrees, are necessarily vested with a broad discretion as to the persons who shall receive those honors, or be recommended for such distinctions; and when the conduct of a student has been such, between his final examination and the time of conferring degrees, that there is a fair occasion for the exercise of discretion on the part of the faculty, . . . it should not be reversed by this court and the case must be an extraordinary one to justify judicial interference." People v. New York Law School, (1893) 68 Hun 118, 22 N. Y. S. 663.

Student's right to a certificate of attendance.—Although a law school has the right to refuse to recommend a student as worthy of a degree where he has been guilty of misconduct, he still "is entitled to a certificate of attendance, and that he passed a satisfactory examination" if such be the fact. People v. New York Law School, (1893) 68 Hun 118, 22 N. Y. S. 663.

§ 69. Colleges may construct water-works and sewer systems.

1. Every incorporated college in this state is duly authorized and empowered to construct and maintain a system of water-works for the purpose of supplying its college buildings and premises with pure and wholesome water for domestic, sanitary and fire purposes, and for the preservation of the health of its students, faculty and employees, and for the preservation of the public health of the town, village or city in or near which such college is located, and the construction and maintenance of such water-works is declared to be a public use. Such water-works, as often as necessary, may be enlarged or improved. [1]Every such incorporated college owning its water-works system and having an adequate supply of water therefrom, may furnish water to persons other than students, faculty and employees of such college at and for a just and adequate compensation, providing that they reside within a sewer district now created in which the premises of the said college or any part thereof are embraced, and provided no municipal or private public service corporation operates or maintains a system of water-works therein capable of supplying water to such inhabitants. Whenever any such college shall extend its mains along any streets, avenues or highways for the purpose of supplying water to such inhabitants, it shall not lose its exemption from taxation by reason thereof, and shall not be deemed to be exercising a public or corporate franchise within the meaning of the tax law.

2. Any such college shall have the right to acquire real estate, or any interest therein, necessary or proper for such water-works,

[1] Remainder of subdivision new.

and the right to lay, relay, repair and maintain conduit and water pipes, with connections and fixtures, on, through, and over the lands of others; the right to intercept and divert the flow of waters from the lands of riparian owners, and from persons owning and interested in any waters; and the right to prevent the flow or drainage of noxious, or impure, or unwholesome matter from the lands of others into its reservoirs, or sources of supply. But no such college shall ever have power to take or use water from any of the lands of this state, or any land, reservoir, or feeders, or any streams which have been taken by the state for the purpose of supplying the canals with water. The consent of an incorporated village or city must be obtained to lay any such pipes in or through its streets, and such consent may be accompanied by such reasonable conditions or restrictions as are proper.

3. Such college may cause such examinations and surveys for its proposed water-works to be made as may be necessary to determine the proper location thereof, and for such purpose, by its officers, agents and servants, may enter upon any lands or waters in the vicinity for the purpose of making such examinations and surveys, subject to liability for all damage done. When surveys or examinations are made or concluded, a map shall be made of the lands or interests to be taken or entered upon, and on which the land or interest of each owner or occupant shall be designated, and all streets and roads in which it is proposed to lay conduit pipes, with the proposed line thereof, which map shall be dated and signed by the engineer making the same; and said map shall be filed and kept in the college library for examination and reference, and a duplicate thereof shall be filed in the clerk's office in each county wherein any of such lands or interests proposed to be taken are located. Such examinations and surveys may be ordered and directed by the president or board of trustees of such college. A majority of the trustees shall determine upon the construction of such water-works and the plans thereof, and order contracts therefor to be made by such officers of the college as may be designated.

4. If any such college shall be unable to agree upon such terms of purchase of any such property, right or easements, before or after plans shall be determined upon, it may, after such plans have been adopted, acquire the same by condemnation, according to the provisions of the condemnation law.

5. When any such college has constructed and completed waterworks, as above provided, it may, by a majority of its trustees, determine upon and construct a sewer system; it may connect the same with the sewer system of the village or city in or near which said college is situated, if such connection is practicable. Examination, surveys and a map may be made as above provided. Lands and easements may be acquired by purchase, as above provided, and in case such acquisition can not be made by purchase then they may be acquired by condemnation, according to the provisions of the condemnation law.

Subd. 1 was amended "to read as" above by L. 1913, ch. 422. The change is indicated in the footnote.

This section was derived from Education Law of 1909, § 1106, which came from L. 1895, ch. 630, §§ 1–8.

§ 70. State scholarships established. 1. State scholarships are hereby established in the several counties of the state, to be maintained by the state and awarded as provided by this act.

2. Five such scholarships shall be awarded each county annually for each assembly district therein.

3. Each such scholarship shall entitle the holder thereof to the sum of one hundred dollars for each year which he is in attendance upon an approved college in this state during a period of four years, to be paid to or for the benefit of such holder as hereinafter provided, and out of a fund which is hereinafter created.

New. Added by L. 1913, ch. 292.

§ 71. Scholarship fund of the University of the State of New York. 1. The scholarship fund of the University of the State of New York is hereby created. Such fund shall consist:

a. Of all money appropriated therefor by the legislature;

b. Of all money and property hereafter received by the state, the regents of the university or the commissioner of education by gift, grant, devise or bequest for the purpose of providing funds for the payment of such scholarships and of all income or revenue derived from any trust created for such purpose.

2. Such fund shall be kept separate and distinct from the other state funds by the state treasurer, and payment shall be made therefrom to the persons entitled thereto in the same manner as from other state funds, except as otherwise provided by this act.

3. Whenever any such gift, grant, devise or bequest shall have been made or any trust shall have been created for the purpose of providing funds for such scholarships, the incomes or revenues derived therefrom shall be applied in maintaining scholarships in addition to those to be maintained by appropriations made by the state legislature, as provided herein, and no part of such income or revenue shall be applied for the maintenance of state scholarships hereinbefore established for each county. Such additional scholarships shall be equitably apportioned by the commissioner of education among the several counties, unless it be provided in the will, deed or other instrument making such gift, grant, devise or bequest, or creating such trust, that the incomes or revenues derived therefrom be applied to the establishment and maintenance of additional scholarships in a specified county.

New. Added by L. 1913, ch. 292.
Devises and bequests to state in trust for schools: see STATE FINANCE LAW, §§ 39, 40.
Grants and devises of real property for educational purposes: see REAL PROPERTY LAW, § 114.
Grants and bequests of personal property for educational purposes: see PERSONAL PROPERTY LAW, § 13.

§ 72. Regents to make rules. The regents shall make rules governing the award of such scholarships, the issuance and cancellation of certificates entitling persons to the benefits thereof, the use of such scholarships by the persons entitled thereto, and the rights and duties of such state scholars, and the colleges which they attend, in respect to such scholarships, and providing generally for carrying into effect the provisions of this act. Such rules shall be in conformity with this act and shall have the force and effect of a statute.

New. Added by L. 1913, ch. 292.
Admission of law school graduates as attorneys: see JUDICIARY LAW, § 53.

§ 73. List of candidates, award of scholarships. 1. The commissioner of education shall cause to be prepared for each county of the state, annually, during the month of August, from the records of the education department, a list of the names of all pupils residing therein who became entitled to college entrance diplomas under regents' rules, during the preceding school year. Such list shall also show the average standing of the pupils in the several subjects on which each of such diplomas was issued.

2. The commissioner of education shall also cause the names of all pupils on the foregoing lists of the several counties, who are not appointed to scholarships in the county of their residence, to be arranged upon a state list in the order of their merit, as shown by their average standings on the several county lists, from which unclaimed vacant scholarships shall be filled as hereinafter provided.

3. The scholarships to which each county is entitled shall be awarded by the commissioner of education annually in the month of August to those pupils residing therein who became entitled to college entrance diplomas, under regents' rules, during the preceding school year and in the order of their merit as shown by the list prepared as provided in subdivision one of this section.

4. In case a pupil who is entitled to a scholarship shall fail to apply for such scholarship within thirty days after being notified that he is entitled thereto or shall fail to comply with the rules of the regents as to such scholarships and the same shall have been revoked or cancelled on account thereof, or, if for any other reason such scholarship shall become vacant, then the pupil standing next highest to those pupils on such list for such county who have received scholarships, shall be entitled to receive appointment to such vacant scholarship.

5. In case a scholarship belonging to a county shall not be claimed by a resident of such county or if there be no resident of the county entitled to appointment to the vacant scholarship in such county, the commissioner of education shall fill such vacancy by appointing from the state list the person entitled to such vacancy as provided in subdivision two of this section.

6. The commissioner of education shall cause such person entitled to receive appointment to a scholarship to be notified of his rights thereto and of his forfeiture of such rights by failure to make the application for such scholarship required under section seventy-four of this act.

New. Added by L. 1913, ch. 292.

§ 74. Issuance of scholarship certificate. Upon the application of a pupil duly notified of his right to a scholarship, the commissioner of education shall issue to such pupil a scholarship certificate. Such application and such certificate shall be in the form prescribed by the commissioner of education and such certificate

shall specify the college for which it is valid. Said commissioner may also require such additional statements and information to accompany such application as he may deem necessary.

New. Added by L. 1913, ch. 292.

§ 75. Effect of certificate; payments thereon. The certificate issued as provided in the preceding section shall entitle the person named therein to receive the sum of one hundred dollars each year for a period of four years to [1]aid such person in the completion of a college education. Such sum shall be paid by the state treasurer in two equal payments, one on October first and the other on March first out of the scholarship fund of the University of the State of New York, upon the warrant of the comptroller issued with the approval of the commissioner of education. Such approval shall be given upon vouchers or other evidence showing that the person named therein is entitled to receive the sum specified, either directly or for his or her benefit. The rules of the regents may prescribe conditions under which payments may be made direct to the college attended by the person named in such certificate, in behalf of and for the benefit of such person.

New. Added by L. 1913, ch. 292, and amended to read as above by L. 1913, ch. 437. The change effected by the amendment is indicated in the footnote.

§ 76. Revocation of scholarship. If a person holding a state scholarship shall fail to comply with the rules of the regents in respect to the use of such scholarship, or shall fail to observe the rules, regulations or conditions prescribed or imposed by such college on students therein, or shall for any reason be expelled or suspended from such college, or shall absent himself therefrom without leave, the commissioner of education may, upon evidence of such fact deemed by him sufficient, make an order under the seal of the education department revoking such scholarship and thereupon such scholarship shall become vacant and the person holding such scholarship shall not thereafter be entitled to further payment or benefits under the provisions of this act and the vacancy caused thereby shall be filled as provided in section seventy-three of this act.

New. Added by L. 1913, ch. 292.

[1] Remainder of sentence formerly read: "be applied in partial or entire payment of the annual tuition fee charged by the college named in such certificate for instruction in the course specified therein."

§ 77. Limitation as to number of scholarships; courses of study. At no time shall there be more than twenty scholarships established and maintained for each assembly district and at no time shall there be more than three thousand such scholarships so established and maintained for the entire state not including scholarships maintained from the revenues or income of trust funds, or gifts, devises or bequests created or made as provided in this act for the maintenance of such scholarships. A person entitled to such scholarship shall not be restricted as to the choice of the college which he desires to attend, or the course of study which he proposes to pursue; provided that no such scholarship shall include professional instruction in law, medicine, dentistry, veterinary medicine or theology, except so far as such instruction is within a regularly prescribed course of study leading to a degree other than in the above-named professions; and provided further, that the college selected by the person entitled to such scholarship is situated within the state of New York, and is incorporated as a college and authorized under the laws of this state and the rules of the regents of the university to confer degrees.

New. Added by L. 1913, ch. 292.

ARTICLE 4*

Commissioner of Education

Section 90. Commissioner of education continued.
91. How chosen.
92. Term of office.
93. Salary.
94. General powers and duties.
95. Removal of school officers; withholding public money.
96. Other powers.
97. Schools of union free school districts and cities.
98. Reports of school officers.
99. County clerk and county treasurers to forward certain reports.

§ 90. Commissioner of education continued. The office of commissioner of education is hereby continued.

This section was Education Law of 1909, § 330 pt., which came from Consolidated School Law, L. 1894, ch. 556, tit. 1, § 2; L. 1904, ch. 40, § 3. Section 90 of the Education Law of 1909 is now covered by section 200.

§ 91. How chosen. 1. The commissioner of education shall be elected by a majority vote of the regents.

2. Such commissioner may be elected without regard to the place of his residence whether it be within or without the state of New York.

This section was Education Law of 1909, § 330 pt., which came from Consolidated School Law, L. 1894, ch. 556, tit. 1, § 2; L. 1904, ch. 40, § 3. Section 91 of the Education Law of 1909 is now covered by section 201.
Majority defined: see General Construction Law, § 41.

§ 92. Term of office. The commissioner of education shall serve during the pleasure of the board of regents.

This section was Education Law of 1909, § 330 pt., which came from Consolidated School Law, L. 1894, ch. 556, tit. 1, § 2; L. 1904, ch. 40, § 3. Section 92 of the Education Law of 1909 is now covered by section 202.

§ 93. Salary. The salary of such commissioner shall be seven thousand five hundred dollars per annum, payable monthly, and

* This article was article 13 of the Education Law of 1909. Article 4 of the Education Law of 1909 was "District Meetings."

he shall also be paid one thousand five hundred dollars in lieu and in full for his traveling and other expenses which shall also be payable monthly.

This section was Education Law of 1909, § 330 pt., which came from Consolidated School Law, L. 1894, ch. 556, tit. 1, § 2; L. 1904, ch. 40, § 3. Section 93 of the Education Law of 1909 is now covered by section 203.

§ 94. General powers and duties. The commissioner of education is hereby charged with the following powers and duties:

1. He is the chief executive officer of the state system of education and of the board of regents. He shall enforce all general and special laws relating to the educational system of the state and execute all educational policies determined upon by the board of regents.

2. He shall have general supervision over all schools and institutions which are subject to the provisions of this act, or of any statute relating to education, and shall cause the same to be examined and inspected, and shall advise and guide the school officers of all districts and cities of the state in relation to their duties and the general management of the schools under their control.

3. He shall have general supervision of industrial schools, trade schools and schools of agriculture, mechanic arts and home making; he shall prescribe regulations governing the licensing of the teachers employed therein; and he is hereby authorized, empowered and directed to provide for the inspection of such schools, to take necessary action to make effectual the provisions therefor, and to advise and assist boards of education in the several cities and school districts in the establishment, organization and management of such schools.

4. He shall also have general supervision over the state normal schools which have been, or which may hereafter be, established as required by the provisions of this chapter.

5. He shall be ex officio a trustee of Cornell university.

6. He shall be responsible for the safe keeping and proper use of the department and university seal and of the books, records and other property in charge of the regents, and for the proper administration and discipline of the various officers and divisions of the education department.

7. He may annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher by any authority

whatever or declare any diploma issued by a state normal school ineffective and null as a qualification to teach a common school within this state, and he may reconsider and reverse his action in any such matter.

8. He shall cause to be prepared and keep in his office records of all persons who have received, or shall receive, certificates of qualification to teach or diplomas of the state normal schools, with the dates thereof, and shall note thereon all annulments of such certificates and diplomas, and reversals thereof, with the dates and causes thereof, together with such other particulars as he may deem expedient.

9. He shall cause to be prepared suitable registers, blanks, forms and regulations for making all reports and conducting all necessary business under this chapter, and shall cause the same, with such information and instructions as he shall deem conducive to the proper organization and government of the common schools and the due execution of their duties by school officers, to be transmitted to the officers and persons intrusted with the execution of the same.

10. He may administer oaths and take affidavits concerning any matter relating to the duties of his office or pertaining in any way to the schools of the state or any part thereof.

11. He is hereby authorized to furnish, by means of pictorial or graphic representations, additional facilities for instruction in geography, history, science and kindred subjects, to the schools, institutions and organizations under the supervision of the regents. Material collected for this purpose may, under regents' general rules, be lent for a limited time to responsible institutions and organizations for the benefit of artisans, mechanics and other citizens of the several communities of the state. He may from time to time enter into contracts necessary for carrying out this provision.

12. He shall also have and execute such further powers and duties as he shall be charged with by the regents.

This section was derived from Education Law of 1909, § 331, which came from the University Law, L. 1892, ch. 378, § 5 pt.; Consolidated School Law, L. 1894, ch. 556, tit. 1, § 6; L. 1904, ch. 40, § 4. Section 94 of the Education Law of 1909 is now covered by section 204.

Disqualification to serve as trial juror: see JUDICIARY LAW, § 503.

Effect of transfer of authority to commissioner.— The provisions of L. 1904, ch. 40, § 4, transferring to the commissioner of education the powers formerly exercised by the superintendent of public instruction and by the secretary of

the board of regents, did not necessarily terminate the employment of the subordinates of either department. Op. Atty.-Gen. (1904) 254.

Extent of commissioner's duties.— "An examination of the Education Law discloses that the legislature intended to put upon the commissioner of education full responsibility for the management and control, among other things, of the district schools and of their trustees; and to require of him a strict enforcement of the law applicable to such schools and trustees." Matter of O'Neil, (1911) 71 Misc. 469, 130 N. Y. S. 446.

What schools subject to supervision of commissioner.— The schools of the city of Troy are public schools and therefore subject to the supervision of the commissioner of education. Matter of Harris, (1908) 58 Misc. 297, 109 N. Y. S. 983.

Actions against commissioner to prevent waste.— The commissioner of education is a state officer and consequently does not come within the provisions of a statute authorizing taxpayer's actions against "officers who have acted for or on behalf of any county, town, village, city or municipal corporation in the state, to prevent waste of public funds or injury to public property." Hutchinson v. Skinner, (1897) 21 Misc. 729, 49 N. Y. S. 360.

Power to appoint teachers where board of education fails to act.— Where the members of a bipartisan board of education were in a state of "deadlock" upon all questions relative to the employment of teachers until up to the time fixed for the opening of the city schools, it was held that the former superintendent of public instruction had authority to make an order appointing temporarily a full corps of teachers and employees, at a rate of compensation stated in the order, and to direct the board of education to open the school buildings and place them at the disposal of the new employees and to pay the latter at the rates fixed. Hutchinson v. Skinner, (1897) 21 Misc. 729, 49 N. Y. S. 360.

Power to regulate dress of teachers.— The commissioner of education has power under the state constitution to order that the teachers in a public school shall not wear the distinctive garb or dress of any religious sect or creed in the schoolroom, and that such garb shall be discarded or the teachers dismissed by the trustee. O'Connor v. Hendrick, (1906) 184 N. Y. 421, 77 N. E. 612, 6 Ann. Cas. 432, 7 L. R. A. (N. S.) 402, affirming 109 App. Div. 361, 96 N. Y. S. 161.

Implied power to select enumerators of census.— The duty imposed upon the former superintendent of public instruction of taking a census of the school children in certain towns and cities, carried with it the authority to select the enumerators therefor. Op. Atty.-Gen. (1897) 284.

§ 95. Removal of school officers; withholding public money. 1. Whenever it shall be proved to his satisfaction that any trustee, member of a board of education, clerk, collector, treasurer, school commissioner, superintendent of schools or other school officer has been guilty of any wilful violation or neglect of duty under this chapter, or any other act pertaining to common schools or other educational institution participating in state funds, or wilfully disobeying any decision, order or regulation of the regents or of the commissioner of education, said commissioner may, by an order under his hand and seal, which order shall be recorded in his office, remove such school officer from his office.

2. Said commissioner of education may also withhold from any

district or city its share of the public money of the state for wilfully disobeying any provision of law or any decision, order or regulation as aforesaid.

This section was derived from the Education Law of 1909, § 338, which came from Consolidated School Law, L. 1894, ch. 556, tit. 1, § 13. Section 95 of the Education Law of 1909 is now covered by section 205.

"Wilful violation of duty."— The words "wilful violation of duty," as applied to the acts for which members of a board of education may be removed by the commissioner of education, must be construed to mean acts intentionally done, with a wrongful purpose. People v. Skinner, (1899) 37 App. Div. 44, 55 N. Y. S. 337, affirmed (1899) 159 N. Y. 162, 53 N. E. 806. Thus, evidence that certain members of a town board of education, claiming that an adjournment by the president of the board was unauthorized, proceeded to hold a meeting and that in so acting they were in error, is not sufficient to show such a "wilful violation of duty" as to justify their removal in the absence of proof that they knew or believed that they had no right to hold the meeting. People v. Skinner, (1899) 37 App. Div. 44, 55 N. Y. S. 337, affirmed (1899) 159 N. Y. 162, 53 N. E. 806. But where a school district trustee used abusive language to a taxpayer at a special meeting of the district, saying, "I will twist your old neck off," and immediately after the meeting assaulted him while still on the school premises, the commissioner of education was authorized to remove such trustee from office for "a wilful violation of his duty," and his action in so doing was not reviewable by the courts. Matter of O'Neil, (1911) 71 Misc. 469, 130 N. Y. S. 446.

Removal of attendance officer in the city of New York.— The school board of the borough of Queens, New York city, were justified in denying the appeal of an attendance officer appointed by the village of Flushing and summarily removed by the borough superintendent since he was not a member of the "educational staff" within the meaning of the provisions of the Greater New York charter which declared that "all superintendents, assistant or associate superintendents, and all principals, teachers and other members of the educational staff in the public school system of any part of the city of New York as constituted by this act, shall continue to hold their respective positions and to be entitled to such compensation as is now provided or may hereafter be provided by the various school boards, subject to the limitations of this act, and to reassignment or to removal for cause, as may be provided by law." People v. White, (1901) 64 App. Div. 390, 72 N. Y. S. 91.

Evidence on which removal may be based.— The determination of the state commissioner of education removing a school commissioner from office for a wilful disregard of his duties, etc., under the authority conferred by this section will not be reversed because he based his determination not only upon the evidence produced at the hearing but also upon records in his own office, consisting of letters sent and received, even though they were not called to the attention of the person removed upon the hearing. People v. Draper, (1911) 142 App. Div. 102, 127 N. Y. S. 14, affirming 67 Misc. 460, 124 N. Y. S. 758, affirmed (1911) 202 N. Y. 612, 96 N. E. 1128.

Statements in petition for removal as privileged.— Matters stated in a petition for the removal of school trustees, which are relevant to the legality or propriety of the appointment of the persons sought to be removed, are privileged. Morah v. Steele, (1913) 157 App. Div. 109, 141 N. Y. S. 868.

What may be reviewed on petition for removal.—Although a petition for the removal of a school trustee, which alleges among other things that such trustee was never legally appointed, does not ask for a review of the act of the school commissioner in making the appointment, still the commissioner of education has power to review the validity of the appointment as he might lawfully do on an appeal to him, taken as provided by section 880. Morah v. Steele, (1913) 157 App. Div. 109, 141 N. Y. S. 868.

Judicial review of the order of removal.— It seems that, notwithstanding the provisions of section 880, the courts have power to review an order made by the commissioner of education in the first instance removing a local school officer. People v. Skinner, (1899) 159 N. Y. 162, 53 N. E. 806, affirming 37 App. Div. 44, 55 N. Y. S. 337; Matter of Light, (1898) 30 App. Div. 50, 51 N. Y. S. 743.

When the public moneys may be withheld.— Where a school district and its officers refuse to recognize the decision or obey the order of the commissioner of education with regard to the payment of a teacher's salary, he has power to enjoin the payment to it of its allotted share of the public moneys, although it is in the hands of the supervisor of the town. People v. Allen, (1897) 19 Misc. 464, 44 N. Y. S. 566.

§ 96. Other powers. The commissioner of education shall also have power and it shall be his duty to cause to be instituted such proceedings or processes as may be necessary to properly enforce and give effect to any provision in this chapter or in any other general or special law pertaining to the school system of the state or any part thereof or to any school district or city. He shall possess the power and authority to likewise enforce any rule or direction of the regents.

Section 96 of the Education Law of 1909 is now covered by section 206.

§ 97. Schools of union free school districts and cities. The schools of every union free school district and of every city in all their departments shall be subject to the visitation of the commissioner of education. He is charged with the general supervision of their boards of education and their management and conduct of all departments of instruction.

This section was derived from Education Law of 1909, § 341, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 28. Section 97 of the Education Law of 1909 is now covered by section 207.

§ 98. Reports of school officers. The officers of the several districts and cities of the state and all other school officers shall make such reports and in such form from time to time in relation to the schools under their management and supervision as the commissioner of education shall require.

This section was derived from Education Law of 1909, § 341, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 28.

§ 99. County clerk and county treasurers to forward certain reports. 1. The county clerk of each county shall, upon the requisition of the commissioner of education, file with such commissioner any reports of trustees of school districts and boards of

education or the abstract of such reports made by school commissioners which have been filed in the office of such county clerk pursuant to the provisions of the education law, whenever it is necessary for the commissioner of education to obtain information or data contained in official reports which have been transmitted to the education department but which have been destroyed by fire or otherwise.

2. The county treasurer of each county shall, upon the requisition of the commissioner of education, forward to said commissioner any original certificates relating to the apportionment of school moneys which the commissioner of education has filed in the office of such treasurer whenever it is necessary to obtain information on the apportionment of school moneys when the data relating thereto in the office of the commissioner of education has been destroyed by fire or otherwise. After securing such information as may be necessary from such certificates, the commissioner of education shall return the same to the treasurer of such county.

New. Added by L. 1911, ch. 159.

ARTICLE 5*

School Districts

Section 120. Existing districts continued.
121. Formation of new district.
122. Number and description of districts.
123. Alteration by consent.
124. Alteration without consent.
125. Hearing of objections to order for alteration without consent.
126. Dissolution or alteration of joint district.
127. Special meeting of joint district to act regarding dissolution.
128. Dissolution by consent and consequent alteration of districts.
129. Dissolution, re-formation and consolidation of districts.
130. Consolidation of districts by vote of qualified electors.
131. Request for meeting to consolidate districts; notices of meeting.
132. Proceedings at meeting for consolidation; adoption of resolution; proceedings to be filed.
133. Order creating consolidated district; effect.
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134-a. The bonded indebtedness of certain dissolved districts.
135. Continuance of dissolved district for payment of debts.
136. †Deposits of records of dissolved district.
137. Property of districts consolidated.
138. Sale of property of dissolved district and disposition of proceeds.
139. Collection and distribution of moneys due dissolved district.
140. Fees of supervisor and town clerk.

* This article was article 2 of the Education Law of 1909. Article 5 of the Education Law of 1909 was "School Buildings and Sites."

† So in original.

Section 141. Notice of meeting for establishment of union free school district.
142. Posting, publication and service of notice.
143. Notice in case of adjoining districts.
144. Expense of notice.
145. Proceedings at meeting and effect of affirmative vote.
146. Meeting to determine regarding reorganization as common school district.
147. Result of vote for or against reorganization.
148. Reversion to form of original school districts.
149. School commissioner may require equality of partition.
150. Effect of veto by school commissioner regarding subsequent meeting.
151. Report of proceedings to commissioner of education.
152. Distribution of moneys on dissolution.
153. School property exempt from taxation.
154. Application of funds obtained from sale of school property.

§ 120. Existing districts continued. All school districts organized either by special laws or pursuant to the provisions of a general law are hereby continued and may be altered or dissolved as herein provided.

Section 120 of the Education Law of 1909 is now covered by section 461.

Validity of statute classifying school districts and containing different provisions for different classes of districts: see note Ann. Cas. 1913E 1331.

Separate school district within municipality as subject to regulation by latter: see note Ann. Cas. 1915B 1042.

Liability of school district or school corporation for tort: see note 49 L. R. A. (N. S.) 1026.

§ 121. Formation of new district. 1. A district superintendent[1] may organize a new school district out of the territory of one or more school districts which are wholly within his supervisory[2] district, whenever the educational interests of the community require it. [3] If there is an outstanding bonded indebtedness charge-

[1] Words "district superintendent," substituted for words "school commissioner."

[2] Word "supervisory" substituted for words "school commissioner."

[3] Following sentence new.

able against the district or districts out of the territory of which such new district is organized, the district superintendent shall apportion said indebtedness between such new district and the remaining portion of the district or districts out of which such new district is organized, according to the assessed valuation thereof, and the portion of the indebtedness so apportioned shall become a charge for principal and interest upon the respective districts as though the same had been incurred by said districts separately.

2. The district superintendents[1] of two or more adjoining supervisory[2] districts when public interests require it, may form a joint school district out of the adjoining portions of their respective districts.

Amended to read as above by L. 1912, ch. 294. The changes are indicated in the footnotes. This section was derived from Education Law of 1909, § 20, which came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 1, subd. 2, as amended by L. 1895, ch. 223, § 1. Section 121 of the Education Law of 1909 is now covered by section 462.

Division of school commissioner's district by supervisors: see COUNTY LAW, § 12, subd. 9.

§ 122. Number and description of districts. 1. Each school commissioner shall renumber the school districts of each town in his commissioner district from time to time and shall also number each new district and shall describe in metes and bounds each of such school districts.

2. The order of a school commissioner forming or numbering a school district and the written description thereof together with all notices, orders, consents and proceedings relating to the formation or alteration thereof shall be filed with the town clerk of the town in which such district is located.

3. Every joint district shall bear the same number in every school commissioner district of whose territory it is in part composed.

Section 122 of the Education Law of 1909 is now covered by section 463.

§ 123. Alteration by consent. 1. With the written consent of the trustees of all the districts to be affected thereby, the district superintendent[3] may make an order altering the boundaries of any

[1] Words "district superintendents," substituted for words "school commissioners."

[2] Word "supervisory" substituted for words "school commissioners."

[3] Formerly "school commissioner."

school district within his jurisdiction, and fix in such order a day when the alteration shall take effect.

2.[1] With the written consent of the board of education of a union free school district having a population of five thousand or more, and employing a superintendent of schools, and the written consent of the board of education or trustees of a district in a supervisory district adjoining such union free school district, the district superintendent having jurisdiction may make an order altering the boundaries of such districts, and fix in such order a day when the alteration shall take effect.

Amended to read as above by L. 1914, ch. 154. The changes are indicated in the footnotes.

Paragraph 1 of this section is substantially the same as the Education Law of 1909, § 23, which came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 2.

Section 123 of the Education Law of 1909 is now covered by section 463.

Effect of attempt to alter without consent.— Where it is attempted to alter the boundaries of a school district without the consent of the trustees thereof as provided in this section, an election of trustees in such district as so altered is invalid. Langto v. Raymond, (1904) 90 App. Div. 614 mem., 86 N. Y. S. 182.

§ 124. Alteration without consent. If the trustees of any district affected thereby refuse to consent, the school commissioner may make and file with the town clerk his order making the alteration, but reciting the refusal, and directing that the order shall not take effect until a day therein to be named, and not less than three months after the date of such order.

This section was Education Law of 1909, § 24. It came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 3. Section 124 of the Education Law of 1909 is now covered by section 465.

Power of legislature to abolish or merge school districts.— In Board of Education v. Board of Education, (1902) 76 App. Div. 355, 78 N. Y. S. 522, affirmed without opinion (1904) 179 N. Y. 556, 71 N. E. 1128, the board of education of union free school district No. 6 of the town of Cortlandt. Westchester county (hereinafter referred to as district No. 6), brought an action against the board of education of union free school district No. 7 of the town of Cortlandt, Westchester county (hereinafter referred to as district No. 7), for the purpose of having chapter 576 of the Laws of 1898 declared unconstitutional and void, and incidentally to collect from the latter district the sum of $3,000 in damages by reason of the operation of said statute. The act in question was entitled "An act to locate and establish the boundaries of union free school district No. 7 in the town of Cortlandt." The court said: "The legislature, in the exercise of its powers, might have merged district No. 6 in district No. 7, or it might have abolished the district

[1] Following subdivision new.

entirely, saving the rights of creditors, and there would be no power on the part of the board of education of district No. 6 to interfere, because the constitution has specially reserved to the legislature the power to alter or abolish the corporations of its creation. These union free school districts are organized for special and limited purposes, and, while the constitution provides in section 3 of article 8 that 'all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons,' it is not to be understood that they shall have the general power to sue in all kinds of actions, but only in those which relate to their corporate rights, just as the citizen is confined to actions in which he has a real interest. (Code Civ. Proc., § 449.) District No. 6 has no corporate right as to the limits of its territory; its powers are confined to the maintenance of school privileges within the territory assigned to it by the legislative power of the state, and it can have no standing in the courts of this state except for the purpose of protecting and maintaining its corporate powers and in carrying out the objects for which it was created."

Collateral attack upon order.— Where an order altering certain school districts therein specified, was irregular in that the provisions of the governing statute were not strictly followed, such order was not subject to collateral attack in an action against a school trustee to recover a tax alleged to have been improperly assessed against the plaintiffs as residents of one of the altered districts. Rawson v. Van Riper, (1873) 1 Thomp. & C. 370.

§ 125. Hearing of objections to order for alteration without consent. 1. Within ten days after making and filing such order the school commissioner shall give at least a week's notice in writing to the trustees of all districts affected by the proposed alterations, that at a specified time, and at a named place within the town in which one of the districts to be affected lies, he will hear the objections to the alteration.

2. The trustees of any district to be affected by such order may request the supervisor and town clerk of each of the towns, within which such districts shall wholly or partly lie, to be associated with the school commissioner.

3. At the time and place mentioned in the notice, such commissioner, with the supervisors and town clerks, if they shall attend and act, shall hear and decide the matter, and the decision shall be final unless duly appealed from. Such decision must either affirm or vacate such order, and must be filed with and recorded by the town clerk of the town in which the district to be affected shall lie, and a tie vote shall be regarded a decision for the purposes of an appeal on the merits. Upon such appeal the commissioner of education may affirm, modify or vacate the order of the school commissioner or the action of the local board.

This was, substantially, Education Law of 1909, § 25. It came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 4, as amended by L. 1895, ch. 223, § 2, and L. 1896, ch. 264, § 3. Section 125 of the Education Law of 1909 is now covered by section 466.

Trustees' right to statutory notice.— The trustees cannot be deprived of their statutory right to a week's notice of the time for the hearing of objections to an alteration, and an order made without such notice having been given will be reversed. People v. Hooper, (1878) 13 Hun 639.

§ 126. Dissolution or alteration of joint district. The majority of the school commissioners within whose districts any joint school district lies may make an order at a meeting duly called by one of such commissioners altering or dissolving such district.

This section was derived from Education Law of 1909, § 21, which came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 7. Section 126 of the Education Law of 1909 is now covered by section 467.

Collateral review of order of dissolution.— Where a school district has been dissolved, the court will refuse to review collaterally the proceeding by which such dissolution was effected where the order has been acquiesced in by all the parties in interest "even if it should fail to appear that every preliminary jurisdictional step had been taken." Smith v. Coman, (1900) 47 App. Div. 116, 62 N. Y. S. 106.

§ 127. Special meeting of joint district to act regarding dissolution. 1. If a school commissioner, by notice in writing, shall require the attendance of the other school commissioners, at a joint meeting for the purpose of altering or dissolving a joint district, and a majority of all the commissioners shall refuse or neglect to attend, such commissioners attending, or any one of them, may call a special meeting of such school district for the purpose of deciding whether such district shall be dissolved.

2. If such special meeting shall vote to dissolve the district the school commissioner who called such meeting may make an order dissolving the district and shall recite in such order the refusal or neglect of the other school commissioners, his call of the special meeting and the action taken at such meeting.

This section was derived from Education Law of 1909, § 22, which came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 8.

§ 128. Dissolution by consent and consequent alteration of districts. 1. A school commissioner may dissolve one or more common school districts upon the written consent of the trustees of all the districts to be affected. When one or more of such districts adjoin a union free school district whose limits do not correspond with those of an incorporated village or city, he may annex the territory of such dissolved districts to such union free school district.

2. A school commissioner on the written consent of the boards

of education of the districts affected may also dissolve a union free school district when it adjoins another union free school district and annex the territory of such dissolved district to such other union free school district.

This section was, substantially, Education Law of 1909, § 26, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 30, as amended by L. 1899, ch. 540, § 1; L. 1905, ch. 258, § 1, and L. 1907, ch. 609, § 1.

§ 129. Dissolution, re-formation and consolidation of districts. Any school commissioner may dissolve one or more districts, and may from such territory form a new district; he may also unite such territory or a portion thereof to any adjoining school district, except a union free school district whose boundaries are coterminous with the boundaries of an incorporated village or city.

This section was, substantially, Education Law of 1909, § 27, which came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 9, as amended by L. 1896, ch. 264, § 4. The report of the Board of Statutory Consolidation (1907) at page 1156 refers to certain changes made by the board as follows: "New matter 'common or union free school' inserted to make the section conform to usage in the department of education."

How dissolution is effected.— Under the similar provisions of L. 1894, ch. 556, tit. 6, § 9, it was held that the school commissioner had the power to make an order dissolving a school district and adding a part thereof to another district and no steps other than the filing of such order in the proper office were necessary to bring about such dissolution. Langto v. Raymond, (1904) 90 App. Div. 614 mem., 86 N. Y. S. 182.

§ 130. Consolidation of districts by vote of qualified electors. Two or more common school districts may be consolidated and created as one common school district, *of two or more union free school districts may be consolidated and created as one union free school district, or one or more common school districts may be consolidated with one or more union free school districts and created as a union free school district, by a vote of the qualified electors thereof as provided in the following sections:

Added by L. 1913, ch. 129. Former section 130 was repealed by L. 1911, ch. 334. It related to the "Division of union free school district which contains two incorporated villages," and was Education Law of 1909, § 28, which came from L. 1903, ch. 125, § 1. For decisions under former section 130, see Union Free School Dist. No. 1 v. Glen Park, (1905) 109 App. Div. 414, 96 N. Y. S. 428, affirmed in (1908) 193 N. Y. 431, 86 N. E. 26; People v. Cooley, (1912) 75 Misc. 188, 132 N. Y. S. 625.

* So in original.

§ 131. Request for meeting to consolidate districts; notices of meeting. 1. Whenever two-thirds [1] of the qualified electors of each of two or more districts in which there shall be less than fifteen qualified electors, or if there be fifteen or more qualified electors in either of such districts whenever ten or more of such electors[2] shall sign a request for a meeting to be held for the purpose of determining whether such districts shall be consolidated as a common school district, and submit the same to the trustees or board of education of each of such districts, it shall be the duty of such trustees or board of education to give public notice that a meeting of the qualified electors of such districts will be held at some convenient place within such districts, as centrally located as may be, to vote upon the question of consolidating such districts. Such notice shall specify the day and hour when such meeting shall be held, not less than twenty nor more than thirty days after the posting, service or publication of such notice. If the trustees or board of education shall refuse or neglect to give such notice within twenty days after such request is submitted the commissioner of education may authorize and direct any qualified elector of the district to give such notice.

2. If any part of either of such districts is situated wholly or partly within an incorporated village in which one or more newspapers are published, such notice shall be published once in each week for three consecutive weeks before such meeting in all the newspapers published in such village, and shall also be posted at least twenty days prior to such meeting, in at least five conspicuous places in each district. In all other districts the trustees or board of education of each district shall authorize and direct a qualified elector thereof to notify each qualified elector of such district of such meeting by delivering to him a copy of such notice or in case of his absence from home, by leaving a copy thereof, or so much thereof as relates to the time, place and object of the meeting, at the place of his abode, at least twenty days prior to the time of such meeting.

3. The reasonable expense of the publication and service of such notice shall be chargeable upon the districts, if the vote be in favor of consolidation, and if not, shall be paid by the persons

[1] Formerly "ten or more."

[2] Words "in which there shall be less than . . . whenever ten or more of such electors," new.

signing the request for such meeting as provided by section one hundred and forty-four.

Added by L. 1913, ch. 129 and amended to read as above by L. 1914, ch. 101. The changes are indicated in the footnotes. Former section 131 was repealed by L. 1911, ch. 334. It related to "Method and result of election" and was derived from Education Law of 1909, § 29, which came from L. 1903, ch. 125, § 2.

§ 132. Proceedings at meeting for consolidation; adoption of resolution; proceedings to be filed. Such meeting shall be organized as provided in section one hundred and forty-five.[1] Such meeting may adopt a resolution to consolidate such districts [2]if two-thirds of the qualified electors of each district having less than fifteen of such electors are present, or in case of districts having fifteen or more qualified electors if ten or more are present. The vote upon such resolution shall be by taking and recording the ayes and noes. The clerk shall keep a poll-list upon which shall be recorded the names of all qualified electors voting upon the resolution, the districts in which such electors reside, and how each elector voted. If it shall appear from the votes so recorded that a majority of the qualified electors present and voting from each district are in favor of such resolution it shall be declared adopted. If a majority of the qualified electors present and voting from each district are not in favor of such resolution, all further proceedings at such meeting, except a motion to reconsider or adjourn shall be dispensed with and no such meeting shall be again called within one year thereafter.

Copies of such request, notice of meeting, order of the commissioner of education directing a qualified elector to call such meeting, if any, and the minutes of the meeting, including the record of the vote upon the resolution, duly certified by the chairman and clerk, shall be transmitted by either the chairman or clerk, one to the commissioner of education, and one to the district superintendent of schools in whose jurisdiction such districts are located.

Added by L. 1913, ch. 129, and amended to read as above by L. 1914, ch. 101. The changes are indicated in the footnotes. Former section 132 was repealed by L. 1911, ch. 334. It related to "Apportionment of indebtedness," and was derived from Education Law of 1909, § 30, which came from L. 1903, ch. 125, § 5.

[1] Words "if there are at least ten qualified electors of each of the two or more districts joining in such request, present at such meeting," omitted.

[2] Remainder of sentence new.

§ 133. Order creating consolidated district; effect. The district superintendent shall thereupon issue an order consolidating such districts and creating a common school district, or union free school district, as the case may be, designating such district by number. Such order shall take effect at some date to be specified therein, not more than three months after the date of the meeting. He shall file such order in the town clerk's office of the town in which such districts are located. If such districts are located in two or more supervisory districts such order shall be executed jointly by the district superintendents of such districts. Such order shall have the same effect as an order executed by a district superintendent dissolving two or more common school districts and forming a new district therefrom, or dissolving one or more of such districts and uniting the territory thereof to a union free school district. But a district superintendent may, upon a petition of at least twenty-five qualified electors of the consolidated district, where one of the districts consolidated is a union free school district, or shall, when directed by the commissioner of education, direct the clerk of the board of education of such union free school district to call a special meeting of the qualified electors thereof, for the purpose of increasing the number of members of the board of education of such new district, subject to the limitations prescribed by section three hundred and eight of this chapter, or for the purpose of terminating the offices of the members of the board of education in office when the consolidation takes effect. If it be determined to increase the number of such members, such meeting shall elect the additional number so determined upon, as provided in such section three hundred and eight. If it be determined to elect a new board of education in place of the board in office when the consolidation takes effect, such meeting shall proceed with the election of a board of education as provided in sections three hundred and one and three hundred and two of this chapter.

Added by L. 1913, ch. 334. Former section 133 was renumbered 134-a by the same act.

§ 134. District quotas of consolidated districts. There shall be apportioned and paid to the district created by the consolidation of districts as provided in sections one hundred and twenty-eight,

one hundred and twenty-nine and[1] one hundred and thirty-two of this article district quotas for each of the districts consolidated in the same amount and under the same conditions as though such consolidation had not been affected. Such apportionment shall be based upon the assessed valuation of the taxable property within such districts as they existed at the time of the consolidation, and the trustees or board of education of the consolidated district shall include in their report a statement of such assessed valuation. [2] The money so apportioned and paid to the consolidated district may be applied to the payment of the salaries of teachers, the transportation of pupils and the maintenance of the school in the district.

Added by L. 1913, ch. 129, and amended to read as above by L. 1914, ch. 101. The changes are indicated in the footnotes. Former section 134 was repealed by L. 1911, ch. 334. It related to "Temporary attendance of pupils as before division," and was derived from Education Law of 1909, § 31, which came from L. 1903, ch. 125, § 6.

§ 134-a. The bonded indebtedness of certain dissolved districts. Whenever two or more districts are dissolved pursuant to the provisions of section one hundred and twenty-eight of this article and annexed to adjoining districts or consolidated as provided in section one hundred and thirty-two,[3] the bonded indebtedness of any such district shall thereupon become a charge upon the enlarged district formed by such annexation. The board of education or trustees[4] of such district shall raise by tax an amount sufficient to pay *one of the bonds and interest thereof of such district as the same shall become due.

This is former section 133. It was renumbered 134-a and amended to read as above by L. 1913, ch. 129. The changes are indicated in the footnotes.

§ 135. Continuance of dissolved districts for payment of debts. Though a district be dissolved, it shall continue to exist in law, for the purpose of providing for and paying all its just debts; and to that end the trustees and other officers shall continue in office, and the inhabitants may hold special meetings, elect officers to

[1] Words "one hundred and twenty-eight, one hundred and twenty-nine and," new.

[2] Following sentence new.

[3] Words "or consolidated as provided in section one hundred and thirty-two," new.

[4] Words "or trustees" new.

* So in original.

supply vacancies and vote taxes; and all other acts necessary to raise money and pay such debts shall be done by the inhabitants and officers of the district.

This section was Education Law of 1909, § 32. It came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 12.

Actions by or against trustees after dissolution.— Where a school district was dissolved and consolidated in its entirety with another district, it was held that the board of education of the consolidated district might bring an action against the former treasurer of the dissolved district to recover moneys belonging to such dissolved district (there being no unpaid debts to which such money was applicable) without first appealing to the commissioner of education for a final decision of the matter. Board of Education v. Storms, (1901) 147 App. Div. 679, 132 N. Y. S. 639.

Continuance in office of trustee after dissolution.—A person who is a trustee of a school district at the time of its dissolution, continues to hold his office, and "in the absence of proof that, by his death or otherwise, such office has become vacant," another cannot be lawfully elected in his place. Langto v. Raymond, (1904) 90 App. Div. 614 mem., 86 N. Y. S. 182. And where a school district has been dissolved, a person who is a trustee at the time of the dissolution continues as such trustee "for the purpose of paying all the just debts of the district" and an action may be brought against him in his official capacity to recover for goods supplied pursuant to his order. Smith v. Coman, (1900) 47 App. Div. 116, 62 N. Y. S. 106.

§ 136. Deposit of records of dissolved district. 1. The school commissioner, or a majority of such commissioners in whose districts a dissolved school district was situated, shall by written order delivered to the clerk of the district, or to any person in whose possession the books, papers and records of the district, or any of them, may be, direct such clerk or other person to deposit the same in the clerk's office in the town named in the order.

2. Such clerk or other person, by neglect or refusal to obey the order, shall forfeit fifty dollars, to be applied to the benefit of the common schools of said town.

This section was, substantially, Education Law of 1909, § 33. It came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 13.

§ 137. Property of districts consolidated. When two or more districts shall be consolidated into one, the new district shall succeed to all the rights of property possessed by the annulled districts.

This section was Education Law of 1909, § 34. It came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 1, ¶ 9.

§ 138. Sale of property of dissolved district and disposition of proceeds. 1. When a district is divided into portions, which are

annexed to other districts, its property shall be sold by the supervisor of the town, within which its school-house is situated, at public auction, after at least five days' notice.

2. Such notice shall be given by posting the same in three or more public places of the town in which the school-house is situated and in one conspicuous place in the district so dissolved.

3. The supervisor, after deducting the expenses of the sale, shall apply its proceeds to the payment of the debts of the district, and apportion the residue, if any, among the owners or possessors of taxable property in the district, in the ratio of their several assessments on the last corrected assessment-roll of the towns, and pay it over accordingly.

This section was, substantially, Education Law of 1909, § 35. It came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 11.

§ 139. Collection and distribution of moneys due dissolved district. The supervisor of the town within which the school-house of the dissolved district was situated may demand, sue for and collect, in his name of office, any money of the district outstanding in the hands of any of its former officers, or any other person; and, after deducting his costs and expenses, shall report the balance to the school commissioner who shall apportion the same equitably among the districts to which the parts of the dissolved district were annexed, to be by them applied as their district meeting shall determine.

This section was Education Law of 1909, § 36. It came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 5.

§ 140. Fees of supervisor and town clerk. The supervisor and town clerk shall be entitled each, to one dollar and fifty cents a day, for each day's service in any proceeding under section one hundred twenty-five of this article, to be levied and paid as a charge upon their town.

This section was Education Law of 1909, § 37. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 1, as amended by L. 1896, ch. 264, § 9. Section 140 of the Education Law of 1909 is now covered by section 222.

§ 141. Notice of meeting for establishment of union free school district. 1. Whenever fifteen persons entitled to vote at any meeting of the inhabitants of any school district in this state, shall sign a request for a meeting, to be held for the purpose of

determining whether a union free school shall be established therein in conformity with the provisions of this article, it shall be the duty of the trustees of such district, within ten days after such request shall have been presented to them, to give public notice that a meeting of the inhabitants of such district entitled to vote thereat will be held for such purpose as aforesaid, at the school-house, or other more suitable place in such district, on a day and at an hour to be specified in such notice not less than twenty nor more than thirty days after the publication of such notice.

2. If the trustees shall refuse to give such notice, or shall neglect to give the same for twenty days, the commissioner of education may authorize and direct any inhabitant of such district to give the same.

This section was Education Law of 1909, § 38. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 2.
Section 141 of the Education Law of 1909 is now covered by section 221.

§ 142. Posting, publication and service of notice. 1. Whenever such district shall correspond wholly or in part with an incorporated village, in which there shall be published a daily or weekly newspaper, the notice required in section one hundred and forty-one shall be given by posting the same in five conspicuous places in said district, at least twenty days prior to such meeting, and by causing the same to be published once a week for three consecutive weeks before such meeting, in all the newspapers published in said district.

2. In other districts the said notice shall be given by posting the same as aforesaid, and in addition thereto, the trustees of such district shall authorize and require any taxable inhabitant thereof to notify every other qualified voter in such district of such meeting by delivering to him a copy of such notice or in case of his absence from home, by leaving a copy thereof, or so much thereof as relates to the time, place and object of the meeting, at the place of his abode at least twenty days prior to the time of such meeting.

This section was Education Law of 1909, § 39. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 3, as amended by L. 1896, ch. 264, § 10.
Section 142 of the Education Law of 1909 is now covered by section 224.

§ 143. Notice in case of adjoining districts. 1. Whenever fifteen persons, entitled as aforesaid, from each of two or more adjoining districts, shall unite in a request for a meeting of the

inhabitants of such districts, to determine whether such districts shall be consolidated by the establishment of a union free school therein, it shall be the duty of the trustees of such districts, or a majority of them, to give public notice of such meeting, at some convenient place within such districts, and as central as may be, within the time and to be published and served in the manner set forth in sections one hundred forty-one and one hundred forty-two of this article, in each of such districts.

2. The commissioner of education may order such meeting under the conditions and in the manner prescribed in section one hundred forty-one of this article.

This section was Education Law of 1909, § 41. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 4, as amended by L. 1896, ch. 264, § 11. Section 143 of the Education Law of 1909 is now covered by section 225.

§ 144. Expense of notice. The reasonable expense of the publication and service of such notice, shall be chargeable upon the district, in case a union free school is established by the meeting so convened, to be levied and collected by the trustees, as in case of taxes now levied for school purposes; but in the event that such union free school shall not be established, then the said expense shall be chargeable upon the inhabitants signing the request, jointly and severally, to be sued for, if necessary, in any court having jurisdiction of the same.

This section was Education Law of 1909, § 40. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 3, as amended by L. 1896, ch. 264, § 10. Section 144 of the Education Law of 1909 is now covered by section 226.

§ 145. Proceedings at meeting and effect of affirmative vote. 1. Any such meeting held pursuant to the foregoing provisions shall be organized by the election of a chairman and clerk and may be adjourned from time to time, by a majority vote, provided that such adjournment shall not be for a longer period than ten days; and whenever at any such meeting duly called and held under the provisions of sections one hundred forty-one and one hundred forty-two of this article, at least fifteen qualified voters of the districts shall be present; or at such meeting duly called and held under the provisions of section one hundred forty-three of this article, at least fifteen qualified voters of each of the two or more adjoining districts, joining in the request, shall be present, such meeting may, by the affirmative vote of a majority

present and voting, adopt a resolution to establish a union free school in said district, or to consolidate the two or more adjoining districts by establishing a union free school in said districts pursuant to the notice of said meeting. If said meeting shall determine to establish a union free school in said districts as aforesaid, it shall be lawful for such meeting thereafter to proceed to the election of a board of education as provided in sections three hundred and one and three hundred and two of this chapter.

2. The school commissioner in whose district the union free school district is thus organized shall designate such district as union free school district number ..... of the town of ..... and the said board shall have the name and style of the board of education of (adding the designation aforesaid).

3. Copies of said request, notice of meeting, order of the commissioner of education directing some inhabitant to call said meeting, if any, and minutes of said meeting, duly certified by the chairman and clerk thereof, shall be transmitted and deposited, immediately after such meeting by one of such officers, one to and with the town clerk, one to and with the school commissioner in whose jurisdiction said districts are located, and one to and with the commissioner of education.

4. If at any such meeting, the question as to the establishment of a union free school shall not be decided in the affirmative, as aforesaid, then all further proceedings at such meeting, except a motion to reconsider or adjourn, shall be dispensed with, and no such meeting shall be again called within one year thereafter.

5. When any such meeting shall have established a union free school in said districts, such union free school district shall not be dissolved within the period of one year from the first Tuesday of August next after such meeting.

This section was Education Law of 1909, § 42, except paragraph 5 which was added by L. 1910, ch. 140. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 5 pt., as amended by L. 1896, ch. 264, § 12.

Section 145 of the Education Law of 1909 is now covered by section 227.

§ 146. Meeting to determine regarding reorganization as common school district. In any union free school district established under the laws of this state, and which shall have been established for the period of one year or more, it shall be the duty of the board of education, upon the application of fifteen resident taxpayers of such district, to call a special meeting in the manner

prescribed by law, for the purpose of determining whether application shall be made in the manner hereinafter provided, for the dissolution of such union free school district, and for its reorganization as one or more common school districts.

This section was Education Law of 1909, § 43. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 32.
Section 146 of the Education Law of 1909 is now covered by section 228.

§ 147. Result of vote for or against reorganization. 1. Whenever, at any such meeting called and held as aforesaid, it shall be determined by a majority vote of the legal voters present and voting, to be ascertained by taking and recording the ayes and noes, not to dissolve such union free school district, no other meeting for a similar purpose shall be held in said district within three years from the time the first meeting was held.

2. Whenever at any such meeting called and held as aforesaid it shall be determined by a two-thirds vote of the legal voters present and voting, to be ascertained by taking and recording the ayes and noes, to dissolve such union free school district, it shall be the duty of the board of education to present to the school commissioner of the commissioner district in which said union free school is situated, a certified copy of the call, notice and proceedings. If such school commissioner shall approve the proceedings of said meeting, he shall certify the same to the board of education. Such approval shall not take effect until the day preceding the first Tuesday of August next succeeding; but after that date such district shall cease to be a union free school district.

This section was Education Law of 1909, § 44. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 33.
Section 147 of the Education Law of 1909 is now covered by section 229.

§ 148. Reversion to form of original school districts. If any union free school district dissolved under the foregoing provisions shall have been established by the consolidation of two or more districts, it shall be lawful for such school commissioner to order that its territory be divided into two or more districts, to correspond, so far as practicable, with the districts theretofore consolidated.

This section was Education Law of 1909, § 45. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 34.
Section 148 of the Education Law of 1909 is now covered by section 230.

§ 149. School commissioner may require equality of partition. Such school commissioner may make his approval of the proceedings of any such meeting held as aforesaid conditional upon the payment, by the district which has been most greatly benefited by the consolidation in the way of buildings and other improvements to the other districts into which the said union free school district is divided, of such sum of money as he may deem equitable.

This section was Education Law of 1909, § 46. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 36.
Section 149 of the Education Law is now covered by section 232.

§ 150. Effect of veto by school commissioner regarding subsequent meeting. If such school commissioner shall not approve the proceedings of any such meeting, held as aforesaid, for the purpose of dissolving a union free school district, no other meeting shall be held in such district, for a similar purpose, within three years from the time the first meeting was held.

This section was Education Law of 1909, § 47. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 39.
Section 150 of the Education Law of 1909 is now covered by section 233.

§ 151. Report of proceedings to commissioner of education. Whenever the proceedings of a meeting, held as aforesaid, for the purpose of dissolving a union free school district, shall have been approved by such school commissioner and shall have been certified by him to the board of education, it shall be the duty of the board of education of the district affected forthwith to file with the commissioner of education, copies of the call, notice, proceedings of the meeting, and the action taken by such school commissioner thereon.

This section was Education Law of 1909, § 48. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 40.
Section 151 of the Education Law of 1909 is now covered by section 234.

§ 152. Distribution of moneys on issolution. All moneys remaining in the hands of the treasurer of the union free school district when the order of dissolution shall take effect shall be apportioned equitably among the several districts into which such union free school district is divided, and shall be paid over to the

collectors or treasurers of such districts when they shall have been elected and have qualified according to law.

This section was Education Law of 1909, § 49. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 37.
Section 152 of the Education Law of 1909 is now covered by section 235.

§ 153. School property exempt from taxation. The grounds, buildings, furniture, books, apparatus and all other property of a school district shall not be subject to taxation for any purpose.

Property exempt from taxation: see TAX LAW, § 4.
What property is exempt.—A house owned by a school district but occupied as a dwelling-house and not used for school purposes is exempt from taxation. Op. Atty.-Gen. (1913) 304.

§ 154. Application of funds obtained from sale of school property. All moneys obtained from the sale of any school property authorized under the provisions of this chapter shall be applied for the benefit of the district as directed by the voters thereof in any annual or special meeting.

ARTICLE 6*

School Neighborhoods

Section 170. Setting off school neighborhoods.
171. Neighborhood meetings.
172. Duties of neighborhood clerk and trustee.

§ 170. Setting off school neighborhoods. Each school commissioner in respect to the territory within his district shall have power, with the approval of the commissioner of education, to set off by itself any neighborhood adjoining any other state of the union, where it shall be found most convenient for the inhabitants to send their children to a school in such adjoining state, and to deliver to the town clerk of the town in which it lies, in whole or in part, a description of each such separate neighborhood. He shall also prepare a notice, describing such neighborhood, and appointing a time and place for the first neighborhood meeting, and deliver such notice to a taxable inhabitant of such neighborhood. It shall be the duty of such inhabitant to notify every other inhabitant of the neighborhood, qualified to vote at the meeting, by reading the notice in his hearing, or, in case of his absence from home, by leaving a copy thereof, or so much thereof as relates to the time, place and object of the meeting, at the place of his abode, at least six days before the time of the meeting. In case such meeting shall not be held, and in the opinion of the school commissioner it shall be necessary to hold such meeting before the time herein fixed for the first annual meeting, he shall deliver another such notice to a taxable inhabitant of the neighborhood, who shall serve it as hereinbefore provided.

This section was Education Law of 1909, § 60. It came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 51, as amended by L. 1897, ch. 293, § 1. Section 170 of the Education Law of 1909 is now covered by section 250.

§ 171. Neighborhood meetings. The annual meeting of each neighborhood shall be held on the first Tuesday of August in each year, at the hour and place fixed by the last previous neighborhood meeting; or, if such hour and place has not been so fixed,

* This article was article 3 of the Education Law of 1909. Article 6 of the Education Law of 1909 was, "School District Officers; General Provisions."

then at the hour and place of such last meeting; or, if such place be no longer accessible, then at such other place as the trustee, or, if there be no trustee, the clerk, shall in the notices designate. The proceedings of no neighborhood meeting, annual or special shall be held illegal for want of a due notice to all the persons qualified to vote thereat, unless it shall appear that the omission to give such notice was wilful and fraudulent. The inhabitants of any neighborhood, entitled to vote, when assembled in any annual meeting or any special meeting called by the commissioner as above provided, shall have power, by a majority vote of those present, to appoint a chairman for the time being, and to choose a neighborhood clerk and one trustee, and to fill vacancies in office. The provisions of article seven of this chapter, shall apply to and govern such meeting, so far as the same can in substance be applied to the proceedings; and the provisions of article eight of this chapter shall apply to and govern the officers of such neighborhood, so far as the same can in substance be applied thereto.

This section was Education Law, § 61. It came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 53, as added by L. 1897, ch. 293, § 2.
Section 171 of the Education Law of 1909 is now covered by section 251.

§ 172. Duties of neighborhood clerk and trustee. The neighborhood clerk shall keep a record of the proceedings of his neighborhood, and of the reports of the trustees, and deliver the same to his successor. In case such neighborhood shall be annexed to a district within this state its records shall be filed in the office of the clerk of such district. The trustee shall, between the twenty-fifth day of July and the first day of August in every year, make his annual report to the school commissioner, and file it in the office of the clerk of the town of which the neighborhood is a part. Such report shall specify the whole amount of public moneys received during the year and from what public officer, and the manner in which it was expended; the whole number of such children as can be included in the district trustees' report residing in the neighborhood on the thirtieth day of August prior to the making of such report; and any other matters which the commissioner of education may require.

This section was Education Law of 1909, § 62. It came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 53, as added by L. 1897, ch. 293, § 2.
Section 172 of the Education Law of 1909 is now covered by section 252.

ARTICLE 6-A*

Temporary School Districts

Section 175. Establishment of temporary school districts.
176. Organization of districts; officers.
177. Maintenance of schools; teachers.
178. Payment of expenses; gifts and contributions.
179. Regulations of commissioner of education.

§ 175. Establishment of temporary school districts. Temporary school districts may be established outside of cities and union free school districts and public schools shall be maintained therein as hereinafter provided. Such districts may be established whenever any considerable number of persons shall have been congregated in camps or other places of temporary habitation, who are engaged in the construction of public works by, or under contract with, the state, or in the construction of public works or improvements by or under contract with any municipality. Such temporary districts shall be established by order of the district superintendent of schools of the supervisory district within which such camps or other places of temporary habitation are located, subject to the approval of the commissioner of education. Such order shall be filed in the state education department and if the public works or improvements are being constructed by a municipality, a copy thereof shall be filed in the office of the officer or board of the city under whose direction they are being constructed. When so established such districts shall be entitled to share in the apportionment of public money as in the case of other school districts, except that each district quota shall be one hundred and twenty-five dollars. The money so apportioned shall be paid to the treasurer of the district and be applied in the payment of teachers' salaries.

New. Added by L. 1913, ch. 176.
Section 175 of Education Law of 1909 is now covered by section 255.

§ 176. Organization of districts; officers. Each of such districts shall have a trustee who shall be appointed by the district superintendent of schools, and a district clerk and treasurer to be

* This article was added to Education Law of 1910 (ch. 140) by L. 1913, ch. 176.

appointed by the trustee. Each of such officers shall serve during the continuance of the camp or other place of temporary habitation, unless sooner removed by the district superintendent. The treasurer shall give a bond to the people of the state, in an amount to be determined by the district superintendent, and with sureties approved by him, conditioned for the proper disbursement and accounting of all moneys received by him in behalf of such district.

New. Added by L. 1913, ch. 176.
Section 176 of Education Law of 1909 is now covered by section 256.

§ 177. Maintenance of schools; teachers. Such schools shall be under the supervision of the district superintendent and shall be maintained pursuant to regulations adopted by the commissioner of education. They shall be free to all children of school age residing in such camps and other places of temporary habitation, and also to all adults residing therein. They shall be open at such hours as may be prescribed by the district superintendent, subject to the approval of the commissioner of education. The trustee of each such district shall employ qualified teachers for the school therein, for such term and at such rate of compensation as may be determined upon by the district superintendent, with the approval of the commissioner of education. The said trustees shall provide suitable building or rooms for such school and shall require the same to be kept in proper condition for the maintenance thereof, and shall cause the same to be equipped and supplied with all necessary books, furniture, apparatus and appliances.

New. Added by L. 1913, ch. 176.
Section 177 of Education Law of 1909 is now covered by section 257.

§ 178. Payment of expenses; gifts and contributions. The costs and expenses of maintaining such schools in temporary districts, exclusive of the amount apportioned thereto out of the public moneys, shall be paid in such districts where the public works are being constructed by the state, out of moneys appropriated for such purpose. In districts where public works or improvements are being constructed for a municipality, such costs and expenses shall be a charge upon such municipality, and shall be paid out of funds available for the payment of the cost of construction of such works or improvements.

The trustee of such district shall prepare an estimate of the amount of probable expenditures for the maintenance of the public schools in such district, which shall include a statement of the amount in the hands of the treasurer available for such maintenance, the amount received by such treasurer from gifts, contributions and other sources, and the amount to be received from the public school moneys, as herein provided, and shall also state the amount required to be raised for such school, specifying the items thereof, for the ensuing school year. The form of such estimate shall be prescribed by the district superintendent. In the districts where the public works are being constructed by a municipality the said estimate shall be executed in duplicate, one of which shall be filed with the state education department, and the other shall be filed in the office of the department or officer of the municipality under whose supervision such public works are being constructed. Upon the approval of such estimates by the state education department notice thereof shall be given to the said department or officer of the municipality, and payment of the amount specified in such estimate shall be made to the treasurer of such district. The treasurer shall preserve vouchers of all payments made by him on account of the school in his district and shall make no payments for purposes not provided for in the estimate, nor without the order of the trustee of the district accompanied with the necessary vouchers.

New. Added by L. 1913, ch. 176.

§ 179. Regulations of commissioner of education. The commissioner of education shall make regulations, not inconsistent herewith, for the purpose of providing for the establishment and maintenance of schools as herein provided, and for the purpose of carrying into effect the full intent of this article.

New. Added by L. 1913, ch. 176.

ARTICLE 6-B*

Central Rural Schools

Section 180. Formation of districts.
181. Notice of meeting and expense of notice.
182. Trustees at meeting.
183. Powers and duties of boards of education.
184. Powers and limitations of districts.
185. State aid.
186. Transportation of scholars.

§ 180. Formation of districts. The commissioner of education is hereby authorized and empowered to lay out in this state in any territory exclusive of a city school districts conveniently located for the attendance of scholars and of suitable size for the establishment of central schools to give instructions usually given in the common schools and in high schools, including instruction in agriculture.

New. Added by L. 1914, ch. 55.

§ 181. Notice of meeting and expense of notice. Whenever fifteen persons who are residents and taxable inhabitants in any such district shall unite in a request for a meeting of the inhabitants of such district to determine whether such school shall be established, and file the same in writing with the town clerk of the town in which such district is located, or if located in more than one town, with the town clerk of each town in which any part of such district is, it shall be the duty of each town clerk with whom such notice is filed to post a notice of such meeting, not less than five or more than ten days after the same is filed in his office, in three conspicuous places in the district if the whole thereof be in his town, or if not, in that part of the district located in his town. If the district be located in more than one town the notice shall be prepared by the clerk of the town containing the largest portion of the territory of the district and furnished by him to the other town clerk or clerks for posting. If a weekly or daily newspaper be published within such school

* This article was added to Education Law of 1910 (ch. 140) by L. 1914, ch. 55.

district the notice shall be published therein by the clerk preparing the notice, at least three days before the meeting. All reasonable expense of the publication and service of such notice shall be a town charge upon the town or towns in which the said district, or a part thereof, is located, unless the district decides to establish a central school under this act, in which case such expense shall be a charge upon the district.

New. Added by L. 1914, ch. 55.

§ 182. Trustees at meeting. 1. Any such meeting held pursuant to such notice shall be organized by the election of a chairman and clerk, and may be adjourned from time to time by a majority vote, provided that such adjournment shall not be for a longer period than ten days; and whenever at any such meeting duly called and held under the provisions of this act fifteen qualified voters of the district shall be present, such meeting may, by an affirmative vote of a majority present and voting, adopt a resolution to establish a central school in said district. If said meeting shall determine to establish such school in said district, it shall be lawful for said meeting thereafter to proceed to the election by ballot of a board of education of not less than three nor more than seven trustees who shall, by the order of said meeting, be divided into three classes, as nearly equal as may be, the first to hold until one, the second until two, and the third until three years from the first Tuesday in August next following. Thereafter there shall be elected in such districts at the annual meeting trustees to supply the places of those whose terms of office by the classification aforesaid expire. The trustees thus elected shall enter at once upon their offices. The said trustees and their successors in office shall constitute the board of education of such district.

2. The commissioner of education shall designate the district thus organized as central school district number..... of the town or towns of ..... and the said board shall have the name and style of "the board of education of (adding the designation aforesaid)."

3. Copies of said requests, notice of meeting and minutes of said meeting duly certified by the chairman and clerk thereof shall be transcribed and deposit made after such meeting by one

of said officers, one to and with the town clerk of each town in which any part of said district is located, one to and with the school superintendent in whose jurisdiction the district or any part thereof is located, and one to and with the commissioner of education.

4. If at any such meeting the question as to the establishment of a central school shall not be decided in the affirmative as aforesaid, then all further proceedings at such meeting, except a motion to reconsider the question, shall be dispensed with, and no such meeting shall be again called within one year thereafter.

5. If any town clerk fail to perform any duty devolving upon him under this act the same may be performed by the commissioner of education.

New. Added by L. 1914, ch. 55.

§ 183. Powers and duties of boards of education. Boards of education in any such district shall have the same powers and duties as boards of education in union free school districts as prescribed by this act. Nothing in this act shall be construed to deprive any existing school district of the property belonging to such district, or to affect the indebtedness of said district.

New. Added by L. 1914, ch. 55.

§ 184. Powers and limitations of district. Any central district thus established shall have the same powers and be subject to the same limitations that are now conferred or imposed by law upon union free school districts as provided by this act.

New. Added by L. 1914, ch. 55.

§ 185. State aid. Any district organized under the provisions of this act shall from the time of its organization receive from the state the amount of money on the basis of attendance paid to the common school districts included therein during the year preceding its organization, at the rate that the said districts were then entitled to receive moneys pursuant to law. If a common school district be divided in the formation of a central district the moneys of such common school district shall be apportioned by the commissioner of education, and the share thereof apportioned to that part of the common school district included in the central district shall be paid to the central district. Whenever any such

district shall comply with the requirements of section six hundred and four of the education law in relation to the establishment of general schools of agriculture and home making, the commissioner of education shall make the same annual apportionment of state school moneys to such central school as is now required to be made by law to a high school or union free school district complying therewith. Any such central district shall also receive all other allowances of public moneys apportioned by the state which it would be entitled to receive if it were a union free school district.

New. Added by L. 1914, ch. 55.
Educational funds: see CONSTITUTION, art. IX, § 3.
Denominational schools not to receive state aid: see CONSTITUTION, art. IX, § 4.

§ 186. Transportation of scholars. The commissioner of education shall have power in any such central district to require the payment by the district of such expense of transportation of school children to and from the school as in his judgment justice requires, and the same shall be a charge upon the district.

New. Added by L. 1914, ch. 55.

ARTICLE 7*

District Meetings

Section 190. Notice of first meeting of district.
191. Service of notice of first meeting of district.
192. Second notice of first meeting of district.
193. Notice of annual meeting.
194. Time and place of annual meeting.
195. Annual meetings of districts re-formed after dissolution.
196. Special meeting to transact business of annual meeting.
197. Special meetings in common school districts.
198. Special meetings in union free school †district.
199. Call of special district meeting by school commissioner.
200. Effect of want of due notice of district meetings.
201. Penalty for failure to serve notice.
202. Duty to attend district meetings.
203. Qualifications of voters at district meetings.
204. Declaration in case of challenge of voter.
205. Penalty for false declaration or unauthorized vote.
206. Powers of voters.
207. Vote on proposition to expend money.

§ 190. Notice of first meeting of district. Whenever any school district shall be formed, or two or more common school districts are consolidated as provided in section one hundred and thirty-two[1] the district superintendent of schools,[2] or any one or more of such district superintendents[3] within whose districts it may be, shall prepare a notice describing such district, and appointing a

* This article was article 4 of the Education Law of 1909. Article 7 of the Education Law of 1909 was, "District Clerk; Treasurer; Collector."

† So in original.

1 Words "or two or more common school districts are consolidated as provided in section one hundred and thirty-two," new.

2 Words "district superintendent of schools," substituted for words "school commissioner."

3 Words "district superintendents," substituted for word "commissioners."

time and place for the first district meeting, and deliver such notice to a taxable inhabitant of the district.

Amended to read as above by L. 1913, ch. 129. The changes are indicated in the footnotes.

This section was Education Law of 1909, § 80. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 1.

Section 190 of Education Law of 1909 is now covered by section 270.

Preparation of the notice.— The district superintendent himself must prepare the notice of the first district meeting in a consolidated school district and deliver the same to a taxable inhabitant for service. Langto v. Raymond, (1904) 90 App. Div. 614 mem, 96 N. Y. S. 182.

§ 191. Service of notice of first meeting of district. It shall be the duty of such inhabitant to notify every other inhabitant of the district qualified to vote at the meeting, by delivering to him a copy of the notice of such meeting, or in case of his absence from home, by leaving a copy thereof, or so much thereof as relates to the time, place and object of the meeting, at the place of his abode, at least six days before the time of the meeting.

This section was Education Law of 1909, § 81. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 2.

Section 191 of Education Law of 1909 is now covered by section 271.

§ 192. Second notice of first meeting of district. In case such meeting shall not be held, and in the opinion of the school commissioner it shall be necessary to hold such meeting, before the time herein fixed for the first annual meeting, he shall deliver another such notice to a taxable inhabitant of the district, who shall serve it as provided in section one hundred and ninety-one.

This section was Education Law of 1909, § 82. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 3.

Section 192 of Education Law of 1909 is now covered by section 272.

§ 193. Notice of annual meeting. 1. The district clerk of each common school district shall give notice of the time and place of the annual meeting by posting five notices of such meeting in five conspicuous places in the district five days previous to the date of such meeting. One of such notices must be posted on the front door of the school-house.

2. The clerk of each union free school district shall give notice of the time and place of the annual meeting by publishing a notice once in each week within[1] the four weeks next preceding such district meeting, in two newspapers if there shall be two, or

[1] Word "within" substituted for word "for."

in one newspaper if there shall be but one, published in such district. But if no newspaper shall then be published therein, the said notice shall be posted in at least twenty of the most public places in said district twenty days before the time of such meeting.

Subd. 2 amended to read as above by L. 1915, ch. 171. The change made is indicated in the footnote.

This section was, substantially, Education Law of 1909, § 83.

Section 193 of Education Law of 1909 is now covered by section 273.

§ 194. Time and place of annual meeting. The annual meeting of each school district shall be held on the first Tuesday of May in each year, and, unless the hour and place thereof shall have been fixed by a vote of a previous district meeting, the same shall be held in the schoolhouse at seven-thirty o'clock in the evening. If a district possesses more than one schoolhouse, it shall be held in the one usually employed for that purpose, unless the trustees designate another. If the district possesses no schoolhouse, or if the schoolhouse shall not be accessible, then the annual meeting shall be held at such place as a trustee, or, if there be no trustee, the clerk, shall designate in the notice. Provided, however, that in union free school districts whose limits do not correspond with those of an incorporated city or village, [1]the board of education may at any regular meeting, by resolution duly adopted and entered upon its minutes, determine that the annual meeting of such union free school district shall be held on the first Tuesday in August; and thereafter until such determination shall be changed, such annual meeting shall be held on the first Tuesday in August of each year; and where any such district shall have heretofore or hereafter determined that the election of the members of the board of education shall be held on the Wednesday next following the day designated by law for holding the annual meeting of such district as provided by section three hundred and three of the education law, such election shall be held at the time so determined until such determination shall be changed.

Amended to read as above by L. 1910, ch. 442; L. 1913, ch. 440; L. 1915, ch. 232.

This section was derived from Education Law of 1909, § 84. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 8.

Section 194 of the Education Law of 1909 is now covered by section 274.

[1] Words "and in which the number of children of school age exceed three hundred, as shown by the last annual report of the board of education to the school commissioner," omitted.

§ 195. Annual meetings of districts re-formed after dissolution. The districts formed by the dissolution of a union free school district, as provided in sections one hundred and forty-six and one hundred and forty-seven[1] of this chapter shall hold their annual meetings on the first Tuesday of May[2] next after the dissolution of such union free school district, and shall elect officers as now required by law.

Amended to read as above by L. 1913, ch. 129. The changes are indicated in the footnotes.

This section is similar to Education Law of 1909, § 87. The section came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 38.

Section 195 of Election Law of 1909 is now covered by section 275.

§ 196. Special meeting to transact business of annual meeting. Whenever the time for holding the annual meeting in school districts shall pass without such meeting being held in a district, a special meeting shall thereafter be called by the trustees or by the clerk of such district for the purpose of transacting the business of the annual meeting; and if no such meeting be called by the trustees or the clerk within ten days after such time shall have passed, the school commissioner of the commissioner district in which said school district is situated or the commissioner of education may order any inhabitant of such district to give notice of such meeting in the manner provided in section one hundred ninety-one, and the officers of the district shall make to such meeting the reports required to be made at the annual meeting, subject to the same penalty in case of neglect; and the officers elected at such meeting shall hold their respective offices only until the next annual meeting and until their successors are elected and shall have qualified.

This section was Education Law of 1909, § 85, except that in that section the time limit was twenty days instead of ten. Section 85 of the Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 9.

Section 196 of Education Law of 1909 is now covered by section 275.

§ 197. Special meetings in common school districts. 1. A special district meeting shall be held whenever called by the trustees. The notice thereof shall state the purposes for which it

[1] Words "one hundred and forty-six and one hundred and forty-seven," substituted for words "one hundred and twenty-nine and one hundred and thirty."

[2] Word "May" substituted for word "August."

is called, and no business shall be transacted at such special meeting, except that which is specified in the notice; and the district clerk, or, if the office be vacant, or the clerk be sick or absent, or shall refuse to act, a trustee, or some taxable inhabitant, by order of the trustees, shall serve the notice upon each inhabitant of the district qualified to vote at district meetings, at least six days before the day of the meeting, in the manner prescribed in section one hundred ninety-one.

2. The inhabitants of a district may, at any annual meeting, adopt a resolution prescribing some other mode of giving notice of special meetings, which resolution and the mode prescribed thereby shall continue in force until rescinded or modified at some subsequent annual meeting.

This section was Education Law of 1909, § 86, except that in that section the time limit for serving notices was five days instead of six. Section 86 of Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 6.

Section 197 of Education Law of 1909 is now covered by the provisions of section 275, paragraph 17.

§ 198. Special meetings in union free school districts. 1. Boards of education shall have power to call special meetings of the inhabitants of their respective districts whenever they shall deem it necessary and proper, in the manner prescribed in subdivision two of section one hundred and ninety-three of this chapter.

2. In union free school districts whose limits correspond with those of any incorporated village or city, the boards of education shall have power to call special meetings of the inhabitants of their respective districts for the purposes mentioned in section four hundred and sixty-seven in the manner prescribed in said subdivision two of section one hundred and ninety-three.

This section was Education Law of 1909, § 88, except that the section reference in paragraph 1 was to subdivision 3 of section 126 instead of to subdivision 2 of section 193, and the section reference in paragraph 2 was to sections 147 and subdivision 3 of section 126, instead of to section 467 and subdivision 2 of section 193. Section 88 of Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 13, subds. 1, 2 pt.

The report of the Board of Statutory Consolidation (1907) at page 1170 has an explanatory note as follows: "Part providing that no meeting shall be held illegal for want of due notice is covered by § 89. Part relating to annual meeting is covered by § 83." Sections 89 and 83 now refer to sections 200 and 194.

Section 198 of Education Law of 1909 is now covered by section 276.

§ 199. Call of special district meeting by school commissioner. When the clerk and all the trustees of a school district shall have removed from the district, or their office shall be vacant, so that a special meeting can not be called, as hereinbefore provided, the school commissioner may in like manner give notice of, and call a special district meeting.

This section was Education Law of 1909, § 89. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 4.

Section 199 of Education Law of 1909 is now covered by section 277.

§ 200. Effect of want of due notice of district meetings. The proceedings of no district meeting, annual or special, shall be held illegal for want of a due notice to all the persons qualified to vote thereat, unless it shall appear that the omission to give such notice was wilful and fraudulent.

This section was Education Law of 1909, § 90. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 7.

Section 200 of Education Law of 1909 is now covered by section 278.

Effect of no personal notice.— This section will not validate a meeting at which it was voted to erect a new schoolhouse and issue bonds for the payment thereof, where it appeared that no personal notice whatever of such meeting was given, notices having simply been posted at three places within the district. Austin v. School Dist. No. 5, (1910) 68 Misc. 538, 125 N. Y. S. 222.

§ 201. Penalty for failure to serve notice. Every taxable inhabitant, to whom a notice of any district meeting shall be delivered for service pursuant to any provisions of this article, who shall refuse or neglect to serve the same, as hereinbefore prescribed, shall forfeit five dollars for the benefit of the district.

This section was Education Law of 1909, § 91. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 5.

Section 201 of the Education Law of 1909 is now covered by section 279.

§ 202. Duty to attend district meetings. Whenever any district meeting shall be duly called, it shall be the duty of the inhabitants qualified to vote thereat, to assemble at the time and place fixed for the meeting.

This section was Education Law of 1909, § 92. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 10.

Section 202 of Education Law of 1909 is now covered by section 280.

§ 203. Qualifications of voters at district meetings. A person shall be entitled to vote at any school meeting for the election of

school district officers, and upon all other matters which may be brought before such meeting who is:

1. A citizen of the United States.

2. Twenty-one years of age,

3. A resident within the district for a period of thirty days next preceding the meeting at which he offers to vote; and who in addition thereto possesses one of the following four qualifications:

a. Owns or hires, or is in the possession under a contract of purchase of real property in such district liable to taxation for school purposes, or

b. Is the parent of a child of school age, provided such a child shall have attended the district school in the district in which the meeting is held for a period of at least eight weeks during the year preceding such school meeting, or

c. Not being the parent, has permanently residing with him a child of school age who shall have attended the district school for a period of at least eight weeks during the year preceding such meeting, or

d. Owns any personal property, assessed on the last preceding assessment-roll of the town, exceeding fifty dollars in value, exclusive of such as is exempt from execution.

No person shall be deemed to be ineligible to vote at any such meeting, by reason of sex, who has the other qualifications required by this section.

This section was Education Law of 1909, § 93, except that the next to the last and the last line read, "who has one or more of the other qualifications required by this section," instead as above.

This section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 11. The report of the Board of Statutory Consolidation (1907) at page 1156 refers to certain changes made by the board as follows: "This section has been rewritten without change in the qualifications of voters at district meetings for the purpose of simplifying and expressing more clearly the general and the special qualifications which voters must possess in order to be entitled to vote at such meeting."

Section 203 of Education Law of 1909 is now covered by section 281.

Qualifications of voters at official primaries: see ELECTION LAW, § 71.

Power of legislature to define qualifications of voters at school elections: see note, 7 Ann. Cas. 666.

Right to determine qualifications of voters.— The trustees of a school district "are the authorized business managers of the school within its boundaries, and the legislature has always assumed and been permitted to assume the right to determine who might vote for such trustees and what qualifications should or should not be requisite and necessary." In re Gage, (1894) 141 N. Y. 112, 35 N. E. 1094, 25 L. R. A. 781.

Adopted children.— If people are residents of the district and have children who have attended the district school for at least eight weeks during the

previous year, each of the parents is entitled to vote at the annual or special meetings. If, however, the children residing with the voter are adopted children, then the important question arises as to which is the head of the family, as there seems to be a distinction between adopted children and children residing with their parents, and in the case of adopted children, only the head of the family is entitled to vote at a school meeting. Op. Atty.-Gen. (1905) 519.

Right of women to vote for commissioner under former law.— Since the former school commissioner was a constitutional office, the statute which provided that "all persons without regard to sex, who are eligible to the office of school commissioner and have the other qualifications now required by law, shall have the right to vote for school commissioner in the various commissioner districts of the state," was declared to be unconstitutional under the provision which limited the right to vote for such officers to "male citizens." In re Gage, (1894) 141 N. Y. 112, 35 N. E. 1094, 25 L. R. A. 781. See also Op. Atty.-Gen. (1894) 250.

§ 204. Declaration in case of challenge of voter. If a person offering to vote at any school district meeting shall be challenged as unqualified, by any legal voter in such district, the chairman presiding at such meeting shall require the person so offering, to make the following declaration: "I do declare and affirm that I am, and have been, for the thirty days last past, an actual resident of this school district and that I am qualified to vote at this meeting." And every person making such declaration shall be permitted to vote on all questions proposed at such meeting; but if any person shall refuse to make such declaration, his vote shall be rejected.

This section was Education Law, § 94. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 12.

Section 204 of Education Law of 1909 is now covered by section 282.

Challenges at official primary elections: see ELECTION LAW, § 72.

§ 205. Penalty for false declaration or unauthorized vote. A person who shall wilfully make a false declaration of his right to vote at a school meeting, after his right to vote thereat has been challenged, shall be deemed guilty of a misdemeanor. And a person not qualified to vote at such meeting, who shall vote thereat, shall thereby forfeit ten dollars, to be sued for by the supervisor for the benefit of the common schools of the town.

This section was Education Law of 1909, § 95. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 13. The report of the Board of Statutory Consolidation (1907) at page 1156 refers to certain changes made by the board as follows: "Under the Consolidated School Law there are three separate provisions relative to the penalty for a false declaration or an unauthorized vote. Section 13, tit. 7, makes it a misdemeanor and also provides a penalty of $5. Section 15 of tit. 7, which relates to common school districts having 300 children or more of school age and districts

which hold the election on the Wednesday following the day of the annual meeting makes it also a misdemeanor and provides a fine of $10. Section 14, tit. 8, which relates to union free school districts in which the election is held on Wednesday following the day of the annual meeting, also makes it a misdemeanor and provides a fine of $10. There appears to be no valid reason for these separate provisions and in this proposed law this section covers all classes of districts. It would seem advisable, therefore, to make the forfeit which may be imposed in a common school district $10 instead, thus making the law uniform for all classes of districts."

Section 205 of Education Law of 1909 is now covered by section 283.

Illegal voting: see PENAL LAW, § 765.

§ 206. Powers of voters. The inhabitants entitled to vote, when duly assembled in any district meeting, shall have power, by a majority of the votes of those present:

1. To appoint a chairman.
2. To appoint a clerk for the time if the district clerk is absent.
3. To adjourn from time to time as occasion may require.
4. To elect one or three trustees as hereinafter provided, a district clerk and a district collector, and in any district which shall so determine, as hereinafter provided, to elect a treasurer, at their first meeting, and so often as such offices or any of them become vacated, except as hereinafter provided.
5. At the first meeting, or at any subsequent annual meeting, or at any special meeting duly called for that purpose, the qualified voters of any school district are authorized to adopt by a vote of a majority of such voters present and voting, to be ascertained by taking and recording the ayes and noes, a resolution to elect a treasurer of said district, who shall be the custodian of all moneys belonging to said district, and the disbursing officer of such moneys. If such resolution shall be adopted, such voters shall thereupon elect by ballot a treasurer for said district. Any person elected treasurer at any meeting other than an annual meeting, shall hold office until the next annual meeting after such election, and until his successor shall be elected or appointed, and thereafter a treasurer shall be elected at each annual meeting for the term of one year.

Amended to read as above by L. 1910, ch. 442.

The amendment corrected an error by omitting the words "or at any subsequent annual meeting" following the same words in the second line of the subdivision, preceding "or at any special meeting duly called."

6. To fix the amount in which the collector and treasurer shall give bonds for the due and faithful performance of the duties of their offices.

7. To designate a site for a schoolhouse, or for grounds to be used for playgrounds, or for agricultural, athletic center and social center purposes, or, with the consent of the district superintendent of schools within whose district the school district lies, to designate sites for two or more schoolhouses for the district. Such designation of a site for a schoolhouse, or for such grounds, can be made only at a special meeting of the district, duly called for such purpose by a written resolution in which the proposed site shall be described by metes and bounds, and which resolution must receive the assent of a majority of the qualified voters present and voting, to be ascertained by taking and recording the ayes and noes, or by ballot.

Subd. 7 was amended to read as above by L. 1913, ch. 221.

8. To vote a tax upon the taxable property of the district, to purchase, lease and improve such sites or an addition to such sites; and grounds for the purposes specified in the preceding subdivision, to hire or purchase rooms or buildings for school rooms or schoolhouses, or to build schoolhouses; to keep in repair and furnish the same with necessary fuel, furniture and appurtenances, and to purchase such implements, apparatus and supplies as may be necessary to provide instruction in agriculture and other subjects, and for the organization and conduct of athletic, playground and other social center work.

Subd. 8 was amended to read as above by L. 1913, ch. 221.

9. To vote a tax, not exceeding twenty-five dollars in any one year, for the purchase of maps, globes, reproductions of standard works of art,[1] blackboards and other school apparatus, and for the purchase of text-books and other school necessaries for the use of poor scholars of the district.

Subd. 9 was amended to read as above by L. 1914, ch. 216. The change is indicated in the footnote.

10. To vote a tax for the establishment of a school library and the maintenance thereof, or for the support of any school library already owned by said district, and for the purchase of books therefor, and such sum as they may deem necessary for the purchase of a book-case.

[1] Words "reproductions of standard works of art," new.

11. To vote a tax to supply a deficiency in any former tax arising from such tax being, in whole or in part, uncollectible.

12. To authorize the trustees to cause the school-houses, and their furniture, appurtenances and school apparatus to be insured by any insurance company created by or under the laws of this state, or any other insurance company authorized by law to transact business in this state.

13. To alter, repeal and modify their proceedings, from time to time, as occasion may require.

14. To vote a tax for the purchase of a book for the purpose of recording their proceedings.

15. To vote a tax to replace moneys of the district, lost or embezzled by district officers; and to pay the reasonable expenses incurred by district officers in defending suits or appeals brought against them for their official acts, or in prosecuting suits or appeals by direction of the district against other parties.

16. To vote a tax to pay whatever deficiency there may be in teachers' wages after the public money apportioned to the district shall have been applied thereto.

17. To vote a tax to pay and satisfy of record any judgments of a competent court which may have been or shall hereafter be obtained in an action against the trustees of the district for unpaid teachers' wages, where the time to appeal from said judgments shall have elapsed, or there shall be no intent to appeal on the part of such district, or the said judgments are or shall be of the court of last resort.

18. Whenever any district shall have contracted with the school authorities of any city, or other school district for the education therein of the pupils residing in such school district, or whenever in any school district children of school age shall reside so remote from the school-house therein that they are practically deprived of school advantages during any portion of the school year, the inhabitants thereof entitled to vote are authorized to provide, by tax or otherwise, for the conveyance of any or all pupils residing therein to the schools of such city, or district with which such contract shall have been made, or to the school maintained in said district, and the trustees thereof may contract for such conveyance when so authorized in accordance with such rules and regulations as they may establish, and for the purpose of defraying any expense incurred in carrying out the provisions of

this subdivision, they may if necessary use any portion of the public money apportioned to such district as a district quota.

This section was derived from Education Law of 1909, § 96. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 14 pt., as amended by L. 1896, ch. 264, § 5; L. 1903, ch. 175, § 1; L. 1906, ch. 150, § 1.

Effect of sham election.—A claim to the office of trustee based merely upon a sham election is insufficient to give the claimant a colorable title to the office or make him a de facto trustee so as to render a contract made with a teacher enforceable as against a trustee regularly elected. Hand v. Deady, (1894) 79 Hun 75, 29 N. Y. S. 633.

Sufficiency of notice of meeting to authorize purchase of school site.—A notice of a special district school meeting which stated that it was called "for the purpose of buying or building a school house" etc., is sufficient to support a vote to purchase a site and schoolhouse already built. Williams v. Larkin, (1846) 3 Denio 114.

Sufficiency of description of proposed school site.—Where lands are to be taken by eminent domain for school purposes whether the district is an old or a new one, it is necessary that the site be chosen at a special meeting called for that purpose and by a written resolution which describes the proposed site by metes and bounds. A notice which contained a description of three sites which were to be considered at the meeting was held insufficient. Hemenway v. Schoonmaker, (1909) 134 App. Div. 86, 118 N. Y. S. 931.

Who may vote in selecting school site.—All voters qualified to vote at district meetings have the right to vote in selecting a site for school purposes. Op. Atty.-Gen. (1911) 363.

Delegation of power to designate school site.—In an early case it was held that the power given to the inhabitants of a school district at a meeting duly assembled "to designate a site for the district schoolhouse" could not be delegated to the trustees of the district. Benjamin v. Hull, (1837) 17 Wend. 437.

Validity of tax to pay for after-acquired school property.—It is no objection to the validity of a tax levied to pay for a schoolhouse that the property had not been acquired when the tax was voted. Williams v. Larkin, (1846) 3 Denio 114.

Power to raise money for village library.—A union free school district in a village having a free public library under the management of a president and the officers of a library association, and not being maintained in connection with the school library, has no power to vote to raise by tax a sum to be appropriated to the use of such public library. Op. Atty.-Gen. (1911) 404. But see § 1118 infra.

Power to reimburse officer for defense of personal action.—The voters of a school district have no duty or right to expend the public moneys to reimburse one of its officers for the expenses incurred by him in defending an action for libel brought against him on account of matters relative to the business and affairs of the district. People v. Skinner, (1902) 74 App. Div. 58, 77 N. Y. S. 36.

Power to authorize acceptance of a conveyance on condition.—A school district may properly authorize its trustee to accept a deed of land purchased for a school site on an express condition "that the title and estate of the grantee and his successor, in the said premises, should cease when the said use should cease, and should thereupon be vested in the grantor, his heirs and assigns." Albright v. Riker, (1880) 22 Hun 367, cited 96 N. Y. 643.

Power to direct secretary to cast a ballot for trustee.—The electors of a school district, at a meeting duly called, and held for the purpose of electing a trustee, may unanimously direct the secretary thereof to cast a ballot for such trustee, and he may thus be legally elected. Op. Atty.-Gen. (1894) 249.

Insurance of school property.— Even though the trustees have not been authorized by the vote of a district meeting to procure insurance on the school property, it is their duty to do so, and they are personally liable for loss sustained because of this neglect to perform this duty. Op. Atty.-Gen. (1912) 218.

What constituted a majority under the statute of 1864.— The provisions of L. 1964, ch. 555, § 19, which enacted that "whenever a majority of all the inhabitants of any school district entitled to vote, to be ascertained by taking and recording the ayes and noes of such inhabitants attending at any annual, special or adjourned school district meeting, legally called or held, shall determine," etc., required simply "a majority of the qualified voters in attendance, pursuant to legal notice, who actually vote upon the question submitted by answering 'aye' or 'no' as the names of all present are called." Smith v. Proctor, (1891) 130 N. Y. 319, 29 N. E. 312, 14 L. R. A. 403.

§ 207. Vote on proposition to expend money. In all propositions arising at said district meetings, involving the expenditure of money, or authorizing the levy of taxes, the vote thereon shall be by ballot, or ascertained by taking and recording the ayes and noes of such qualified voters attending and voting at such district meetings.

This section was Education Law of 1909, § 97. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 14, subd. 18.

Manner of taking vote.—A vote to raise "$200 for a public library should under this section be taken by ballot or by recording the ayes and noes rather than by the uplifted hand." Op. Atty.-Gen. (1893) 366.

ARTICLE 8*

School District Officers; General Provisions

Section 220. Officers of district.
221. Qualifications of officers.
222. Ineligibility to office.
223. Oath of office.
224. Terms of office.
225. Terms of officers of newly created district.
226. Number of trustees; determination of change.
227. Election of officers.
228. Notice and acceptance of election.
229. Refusal of trustee to serve.
230. Penalty for refusal to serve or perform duty.
231. Resignation of district officers.
232. Vacating office.
233. Filling vacancy in office of trustee.
234. Filling vacancy in office of clerk, collector or treasurer.
235. Notice of appointment to fill vacancy and filing thereof.
236. District records, books, et cetera, are district property.

§ 220. Officers of district. 1. Each school district shall have from one to three trustees as the district determines, a clerk, a collector and if the district so decides a treasurer.

2. A union free school district shall have from three to nine trustees as the district shall determine.

Section 220 of the Education Law of 1909 is now covered by section 300.

School officer or teacher as municipal officer: see note, Ann. Cas. 1914D 1236.

§ 221. Qualifications of officers. Every school district officer must be able to read and write and must be a qualified voter of the district.

This section was derived from Education Law of 1909, § 141. This came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 22 pt., and tit. 8, § 5 pt., as amended by L. 1896, ch. 264, § 12.

Section 221 of the Education Law of 1909 is now covered by section 301.

* This article was article 6 of the Education Law of 1909. Article 8 of the Education Law of 1909 was, "Trustees."

§ 222. Ineligibility to office. 1. No school commissioner or supervisor is eligible to the office of trustee or member of a board of education, and no trustee can hold the office of district clerk, collector, treasurer or librarian.

2. A person removed from a school district office shall be ineligible to appointment or election to any district office for a period of one year from the date of such removal.

3. Not more than one member of a family shall be a member of the same board of education in any school district.

This section was derived from Education Law of 1909, § 140. Subdivision 2 is new. Education Law of 1909, § 140 came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 22 pt.; tit. 8, § 5, as amended by L. 1896, ch. 264, § 12; tit. 8, § 8 pt., as amended by L. 1895, ch. 337, § 1, and L. 1896, ch. 264, § 14.

Section 222 of the Education Law of 1909 is now covered by section 302.

Eligibility of school commissioner to office of supervisor: see TOWN LAW, § 81.

§ 223. Oath of office. No officer of a school district shall be required to take the constitutional oath of office.

Section 223 of the Education Law of 1909 is now covered by section 303.

Official oaths: see PUBLIC OFFICERS LAW, § 10.

Necessity of taking oath under statute of 1892.— The attorney-general ruled that under L. 1892, ch. 687, § 3, by which a school district was made a municipal corporation, a trustee was required to take and file an oath of office in accordance with the provisions of the "Public Instruction Law." Op. Atty.-Gen. (1894) 253.

§ 224. Terms of office. 1. In a district having three or more trustees the full term of office of trustee shall be three years, but a trustee may be elected for one or two years as provided in this chapter.

2. In a district having a sole trustee the term of office of trustee shall be one year.

3. The term of office of all other district officers shall be one year.

4. One year, within the meaning of this section, is a school year. A school year shall be from August first until July thirty-first following.

Amended to read as above by L. 1910, ch. 442.

The amendment changed former subdivision 4, which read as follows:

"4. From one annual meeting to the next is one year within the meaning of this section."

This section was derived from Education Law of 1909, § 142, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 24.

Section 224 of Education Law of 1909 is now covered by section 305.

§ 225. Terms of officers of newly created district. The terms of all officers elected at the first meeting of a newly created district shall expire on the first Tuesday of May, next thereafter.

Amended to read as above by L. 1913, ch. 129. The amendment substituted the word "May" for "August." This section is, substantially, Education Law of 1909, § 143, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 25.

Section 225 of Education Law of 1909 is now covered by section 306.

§ 226. Number of trustees; determination of change. 1. At the first annual meeting next after the erection of a district the electors shall determine, by resolution, whether the district shall have one or three trustees; and if they resolve to have three trustees, shall elect the three for one, two and three years, respectively, and shall designate by their votes for which term each is elected; thereafter in such district, one trustee shall be elected at each annual meeting to fill the office of the outgoing trustee.

2. The electors of any district having three trustees shall have power to decide at any annual meeting by a majority vote of those present and voting, whether the district shall have a sole trustee or three trustees. If they resolve to have a sole trustee, the trustees in office shall continue in office until their terms of office shall expire. No election of a trustee shall be had in the district until the offices of such trustees shall become vacant by the expiration of their terms of office or otherwise, and thereafter but one trustee shall be elected for said district.

3. The electors of a district having but one trustee may determine at an annual meeting, by a two-thirds vote of the legal voters present thereat, to have three trustees; and upon the adoption of a resolution to that effect, shall proceed to elect three trustees or such number as may be necessary to form a board of three trustees, in the same manner as provided in this section for the election of three trustees at the first annual meeting after the erection of a district; and thereafter in such district, one trustee shall be elected for three years, at each annual meeting, to fill the office of the outgoing trustee.

Subdivision 1 of this section is from Education Law of 1909, § 144, subd. 1, except that the words "On the first Tuesday of August" now read, "At the first annual meeting." Subdivision 2 is from Education Law, § 144, subd. 2, with the exception that the words at the beginning of that subdivision reading, "The electors of any district having three trustees shall have power to decide by resolution," now read, "The electors of any district having

three trustees shall have power to decide at any annual meeting by a majority vote of those present and voting." Subdivision 3 is unchanged.

Section 144 of Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 26.

Section 226 of Education Law of 1909 is now covered by section 307.

§ 227. Election of officers. 1. All district officers shall be elected by ballot and the trustees shall provide a suitable ballot-box for such purpose.

2. Two inspectors of election shall be appointed in such manner as the meeting shall determine, who shall receive the votes cast, canvass the same and announce the result of the ballot to the chairman.

3. A poll-list containing the name of every person whose vote shall be received shall be kept by the clerk of the meeting.

4. The ballots shall be written or printed, or partly written and partly printed, containing the name of the person voted for and designating the office for which each is voted.

5. The chairman shall declare to the meeting the result of each ballot, as announced to him by the inspectors, and the persons having the majority of votes, respectively, for the several officers, shall be elected.

This section is, substantially, Education Law of 1909, § 145. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 14, subd. 4 pt.

Section 227 of Education Law of 1909 is now covered by section 308.

Power to authorize secretary to cast ballot.— There seems to be no reason why the electors at a meeting duly called, and held for the purpose of electing a trustee, should not unanimously direct the secretary thereof to cast a ballot for such trustee. A person so elected has a good title to the office. Op. Atty.-Gen. (1894) 250.

Remedy for deciding election contest.—A contest over the title to the office of school trustee, where both claimants rest upon an election alleged to have been regular and valid, should be decided in a proceeding at law such as quo warranto, mandamus or prohibition. An injunction will not lie in such a case to prohibit one of the claimants from exercising the functions of the office. Welker v. Lathrop, (1914) 210 N. Y. 434, 104 N. E. 938, modifying 149 App. Div. 935, 134 N. Y. S. 1150.

Admissibility of oral evidence to prove election of trustee.— Where the records have been lost, oral evidence is competent to show whether a person making a contract had been regularly elected the trustee of a school district. Smith v. Coman, (1900) 47 App. Div. 116, 62 N. Y. S. 106.

When regularity of election may be questioned.—An irregularity in the election of a trustee cannot be raised for the first time in an action brought by a teacher against the trustee's successor in office to recover the value of her services under a contract made with the former trustee. DeWolf v. Watterson, (1885) 35 Hun 111.

Meaning of the word "majority."— The word "majority" as used in subdivision 5 of this section means an actual majority of the persons voting. Smith v. Proctor, (1891) 130 N. Y. 319, 29 N. E. 312, 14 L. R. A. 403; Op. Atty.-Gen. (1908) 133.

§ 228. Notice and acceptance of election. 1. The district clerk shall forthwith notify in writing each person elected to office of his election and the date thereof.

2. Such person shall be deemed to have accepted the office, unless within five days after the service of such notice, he shall file his written refusal with the clerk. The presence of any such person at the meeting which elects him to office, shall be deemed a sufficient notice to him of his election.

This section is, substantially, Education Law of 1909, § 146. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 27.
Section 228 of Education Law of 1909 is now covered by section 309.

§ 229. Refusal of trustee to serve. A trustee who publicly declares that he will not accept or serve in the office of trustee, or refuses or neglects to attend three successive meetings of the board, of which he is duly notified, without rendering a good and valid excuse therefor to the other trustees vacates his offices by refusal to serve.

This section was Education Law of 1909, § 147. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 30.
Section 229 of Education Law of 1909 is now covered by section 310.

§ 230. Penalty for refusal to serve or perform duty. 1. Every person chosen or appointed to a school district office and being duly qualified to fill the same who shall refuse to serve therein shall forfeit the sum of five dollars.

2. Every person chosen or appointed to a school district office and not refusing to accept the same who shall wilfully neglect or refuse to perform any duty thereof shall by such neglect or refusal vacate his office and also forfeit the sum of ten dollars.

3. The school commissioner of the commissioner district wherein any such person resides may accept his written resignation of the office, and the filing of such resignation and acceptance in the office of the district clerk shall be a bar to the recovery of either penalty under this section.

4. These penalties shall be for the benefit of the district for which such officer was appointed or elected.

This section was derived from Education Law of 1909, § 148, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 33.
Section 230 of Education Law of 1909 is now covered by section 312.
Omission of duty by public officer: see PENAL LAW, § 1857.

§ 231. Resignation of district officers. A school district officer may resign to a district meeting. Such officer shall also be deemed to have resigned if he files a written resignation with the school commissioner of his district and such commissioner endorses thereon his approval and files the same with the district clerk.

Section 231 of the Education Law of 1909 is now covered by section 313.

§ 232. Vacating office. 1. A school district office becomes vacant by the death, resignation, refusal to serve, incapacity, removal from the district or from office.

2. The collector or treasurer vacates his office by not executing a bond to the trustees, as herein required.

3. A trustee or a member of a board of education vacates his office by the acceptance of either the office of school commissioner or supervisor.

This section was derived from Education Law of 1909, § 149, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 28; tit. 7, § 22 pt.; tit. 8, § 5 pt., as amended by L. 1896, ch. 264, § 12.

Section 232 of Education Law of 1909 is now covered by section 314.

Creation of vacancies: see PUBLIC OFFICERS LAW, § 30.

Origin.—Subdivision 3 of this section appeared for the first time in Education Law of 1909, § 149. People v. Kenyon, (1912) 152 App. Div. 898, 136 N. Y. S. 525 (dissenting ojinion by Robson, J.), affirmed (1913) N. Y. 682 mem.

Eligibility of trustee for office of supervisor.—Upon reading subdivision 3 of the section together with section 81 of the Town Law which provides that no "trustee of a school district . . . shall be eligible to the office of supervisor of any town or ward in this state," it appears that "a school trustee is not ineligible to be voted for as a candidate for supervisor, but that he vacates the office of trustee as soon as he accepts the office of supervisor after his election thereto." People v. Kenyon, (1912) 152 App. Div. 898, 134 N. Y. S. 1007, affirmed without opinion (1913) 207 N. Y. 692, 101 N. E. 1117.

But "it seems, however, that he should resign as trustee before entering on his duties as supervisor in order to remove all question that he claims any power as trustee." Op. Atty.-Gen. (1916) 7 St. Dept. Rep. 502.

It was formerly held that a school trustee was not only incapable of holding the office of supervisor, but also of being elected to that office. People v. Purdy, (1897) 154 N. Y. 439, 48 N. E. 821, 61 A. S. R. 624, affirming 21 App. Div. 66, 47 N. Y. S. 601.

§ 233. Filling vacancy in office of trustee. 1. A vacancy in the office of trustee in any district may be filled by election within thirty days after it occurs. If not so filled the school commissioner of the commissioner district, within which the school-house or principal school-house of the district is situated, may appoint a competent person to fill it.

2. If a vacancy in the office of trustee in a union free school district exists the commissioner of education may order a special

election for filling such vacancy. When such special election is ordered the vacancy shall not be filled otherwise.

3. If such vacancy is supplied by a district meeting, it shall be for the balance of the unexpired term; but when such vacancy is supplied by appointment by a school commissioner it shall be only until the next annual meeting of the district.

This section was derived from Education Law of 1909, § 150, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 29.

Section 233 of Education Law of 1909 is now covered by section 315.

Where a vacancy exists in the office of trustee of a union free school district the commissioner of education may order a special election for filling such vacancy, but if such special election is not ordered the board of education shall fill such vacancy by appointment. Op. Atty.-Gen. (1911) 514. And the attorney-general has ruled that when a member of the board of education of a union free school district, whose term would expire on July 31, 1911, was re-elected for a full term, at the annual election in May, 1911, but soon afterward died, successive vacancies would be occasioned thereby, one for the term nearly completed and one on the beginning of the full term for which he was re-elected, each of which vacancies could be filled by special election, if so ordered, or by appointment by the board of education, in case no special election was held. If the vacancy was filled by election, it would be filled for the remainder of the term, and if by appointment, until the next annual election. Op. Atty.-Gen. (1911) 572.

§ 234. Filling vacancy in office of clerk, collector or treasurer. A vacancy in the office of clerk, collector or treasurer, may be filled by appointment by the trustees of the district, and the appointees shall hold their respective offices until the next annual meeting of the district, and until their successors are elected and have qualified.

This section was derived from Education Law of 1909, § 151, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 31.

Section 234 of Education Law of 1909 is now covered by section 316.

§ 235. Notice of appointment to fill vacancy and filing thereof. Every appointment to fill a vacancy shall be forthwith filed, by the school commissioner or trustees making it, in the office of the district clerk, who shall immediately give notice of the appointment to the person appointed.

This section was Education Law of 1909, § 152. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 32.

Section 235 of Education Law of 1909 is now covered by section 317.

§ 236. District records, books, etc., are district property. The records, books and papers belonging or appertaining to the office of any officer of a school district are hereby declared to be the

property of such district and shall be open for inspection by any qualified voter of the district at all reasonable hours, and any such voter may make copies thereof.

This section was Education Law of 1909, § 170, subd. 11. That subdivision came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 34.

Section 236 of Education Law of 1909 is now covered by section 318.

Section 239 of the Education Law of 1909 was not included in the Education Law of 1910, but provisions relating to visitation are contained in the last-mentioned law, section 97.

ARTICLE 9*

District Clerk; Treasurer; Collector

Section 250. Duties of district clerk.
251. Duties of district treasurer.
252. Collector's bond.
253. Collector to disburse teachers' fund.
254. Clerk, treasurer and collector in union free school district.
255. Payments and reports by collector.
256. Liability of collector for moneys lost.
257. Remedy of trustees against collector in default.

§ 250. Duties of district clerk. It shall be the duty of the clerk of each school district:

1. To record the proceedings of all meetings of the voters of his district in a book to be provided for that purpose by the district, and to enter therein true copies of all reports made by the trustees to the school commissioner.

2. To give notice, in the manner prescribed by section one hundred ninety-one, of the time and place of holding special district meetings called by the trustees.

3. To affix a notice in writing of the time and place of any adjourned meeting, when the meeting shall have been adjourned for a longer time than one month, in at least five of the most public places of such district, at least five days before the time appointed for such adjourned meeting.

4. To give the required notice of every annual district meeting.

5. To give notice immediately to every person elected or appointed to office of his election or appointment; and also to report to the town clerk of the town in which the school-house of his district is situated, the names and post-office addresses of such officers, under a penalty of five dollars for neglect in each instance.

6. To notify the trustees of every resignation duly accepted by the school commissioner.

7. To keep and preserve all records, books and papers belonging to his office and to deliver the same to his successor. For a refusal

* This article was Education Law of 1909, article 7. Article 9 of the Education Law of 1909 was "Boards of Education."

or neglect so to do, he shall forfeit fifty dollars for the benefit of the schools of the district, to be recovered by the trustees.

8. To obey the order of the school commissioners as to depositing the books, papers and records of his office in the town clerk's office in case the district shall be dissolved.

9. To attend all meetings of the board of trustees when notified, and keep a record of their proceedings in a book provided for that purpose.

10. To call special meetings of the inhabitants whenever all the trustees of the district shall have vacated their office.

11. To immediately notify the county treasurer of the name and address of persons elected to the office of district treasurer, if a treasurer is elected, and of the district collector.

Subd. 11 was added by L. 1916, ch. 314. With the exception of subd. 11, this section was derived from Education Law of 1909, § 170, subd. 11, which is now section 236. Section 170 of Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 34.

§ 251. Duties of district treasurer. 1. The treasurer of a school district shall be the custodian of all moneys belonging to the district from whatever source derived, and it is hereby made the duty of the trustees of such district to pay to such treasurer any and all moneys that may come into their hands belonging to such district derived from sales of personal or real property of the district, from insurance policies, from bonds of the district issued and sold by them, or from any other source whatever.

2. The collector of such district shall pay over to such treasurer all moneys collected by him under and by virtue of any tax list and warrant issued and delivered to him.

3. Such treasurer is hereby authorized and empowered to demand and receive from the supervisor of the town in which such school district is situated all public moneys apportioned to said district.

4. It shall be the duty of such treasurer within ten days after notice of his election to execute and deliver to the trustees of such district, his bond in such sum as shall have been fixed by a district meeting or as such trustees shall require, with at least two sureties to be approved by such trustees, conditioned to faithfully discharge the duties of his office, and to well and truly account for all moneys received by him, and to pay over any sums of money remaining in his hands to his successor in office. Such bond when

so executed and approved in writing such trustees shall be filed with the district clerk.

5. No moneys shall be paid out or disbursed by such treasurer except upon the written orders of a sole trustee, or a majority of the trustees.

6. Such treasurer shall, whenever required by such trustees report to them a detailed statement of the moneys received by him, and his *disbursments, and at the annual meeting of such district he shall render a full account of all moneys received by him and from what source, and when received, and all disbursements made by him and to whom and the dates of such disbursements respectively, and the balance of moneys remaining in his hands.

This section was Education Law of 1909, § 171. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 35.

Effect of irregularity in form of bond.— Where the board of education of a union free school incorporated under the Common School Act of 1864, by a mistake took from its treasurer in good faith a writing in the form of a bond but not under seal, instead of the bond required by statute, it was held that the writing so taken was valid and enforceable against the sureties thereon, since the Act did not prohibit the board of education from accepting a writing such as that under consideration. Fairport Union Free School v. Fonda, (1879) 77 N. Y. 350.

Extent of the sureties' obligation.— Where the treasurer of the board of education of a union free school was elected for a second term and had in his hands at the beginning of such second term moneys which came into his hands during his first term, the sureties on the bond given in connection with his second term are liable for his failure to pay over such moneys. Fairport Union Free School v. Fonda, (1897) 77 N. Y. 350. And where a union free school had collected money by tax to pay bonds issued by it for the purpose of building a schoolhouse, which moneys were paid over to its treasurer, it was held that the building of a schoolhouse and the raising of money to pay therefor were "school purposes" within the meaning of the Common School Act of 1864; that the money came properly into the hands of the treasurer, and that for a failure upon his part to pay over and account for the same the sureties upon his official undertaking were liable. Fairport Union Free School v. Fonda, (1879) 77 N. Y. 350.

County treasurer's bond.— Where a county treasurer gave a bond "unto the county of Tompkins" conditioned for the faithful performance of his official duties, an action could be maintained on such bond by a town of such county for a misappropriation of its share of the school moneys which was received by such county treasurer for distribution among the various towns of the county, since the statute requiring the bond was remedial and should be liberally construed to give effect to its purpose. Ulysses v. Ingersoll, (1905) 182 N. Y. 369, 75 N. E. 225, 3 Ann. Cas. 455, reversing 81 App. Div. 304, 80 N. Y. S. 924.

City of New York as custodian of school funds.— Under the provisions of the charter of the city of New York (L. 1901, ch. 466) the only relation that the city has to the subject of public education is as the custodian and depositary of school funds, and its only duty with respect to that fund is to

* So in original.

keep it safely and disburse the same according to the instructions of the board of education. Gunnison v. Board of Education, (1903) 176 N. Y. 11, 68 N. E. 106, affirming 80 App. Div. 480, 81 N. Y. S. 181.

§ 252. Collector's bond. 1. Within such time, not less than ten days, as the trustees shall allow him for the purpose, the collector, before receiving the first warrant for the collection of money, shall execute a bond to the trustees, with one or more sureties, to be approved by a majority of the trustees, in such amount as the district meeting shall have fixed, or if such meeting shall not have fixed the amount then in such amount as the trustees shall deem reasonable, conditioned for the due and faithful execution of the duties of his office.

2. The trustees, upon receiving said bond, shall, if they approve thereof, indorse their approval thereon, and forthwith deliver the same to the town clerk of the town in which said collector resides, and said clerk shall file the same in his office, and enter in a book to be kept by him for that purpose, a memorandum, showing the date of said bond, the names of the parties and sureties thereto, the amount of the penalty thereof, and the date and time of filing the same, and said town clerk is authorized to receive as a fee for such filing and memorandum the sum of twenty-five cents, which sum is hereby made a charge against the school district interested in said bond.

This section was Education Law of 1909, § 172. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 80 pt.

Official undertakings: see PUBLIC OFFICERS LAW, § 11.

Validity of acts done before execution of bond.— Where a collector of school taxes received the warrant for the collection of a tax and posted the statutory notices before he had given the bond as required, it was held that all of his acts done prior thereto were validated by the subsequent execution of the bond, and that a taxpayer could not maintain an action against such collector for the sale of his property for the collection of his tax. Duntley v. Davis, (1886) 42 Hun 229, 5 N. Y. St. Rep. 80.

Effect of failure to give bond.— The provisions of subdivision 1 of this section are mandatory, and where a collector never gave the required bond, he had no authority to collect a tax, and the trustee of a school district could not recover against him the amount of the tax assessed and for which a warrant has been issued to him, since the trustee's remedies against a collector are confined to those on his official bond. Woodhull v. Bohenblost, (1875) 4 Hun 399.

Proof necessary to sustain liability on bond.— On an appeal from a judgment rendered in a justice's court in an action by a school trustee on the bond of the collector of his district to recover an amount for which he had failed to account, the report of the plaintiff prepared and filed pursuant to the provisions of the Education Law, while showing a balance in favor of the district, did not disclose whether such amount was in the hands of the supervisor or the collector, there being no treasurer of the district, and the public

moneys apportioned to such district were not shown to have been paid to the collector. It was held that the collector could not be held accountable and a judgment in favor of the plaintiff should be reversed. Wise v. Bull, (1913) 80 Misc. 205, 141 N. Y. S. 917.

§ 253. Collector to disburse teachers' fund. 1. The trustees of a school district which has not a treasurer may direct by resolution duly entered on the minutes of their proceedings the collector of such district to disburse to teachers the money apportioned by the state for teachers' salaries.

2. The collector shall thereupon execute a bond to the trustees, with two or more sureties, in double the amount of the last apportionment, with like condition of sureties, approval of trustees, and amount and like directions as to filing as are required in the preceding section for a bond for the collection of taxes, and conditioned also for the due and faithful execution of the duties of his office as such disbursing agent.

This section was derived from Education Law of 1909, § 173, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 80 pt.

§ 254. Clerk, treasurer and collector in union free school district. 1. In every union free school district the board of education shall have power to appoint one of their number, or some other qualified voter in said district who is not a teacher employed therein as clerk of the board of education of such district.

2. Such clerk shall also act as clerk of said district, and shall perform all the clerical and other duties pertaining to his office, and for his services he shall be entitled to receive such compensation as shall be fixed at an annual meeting of such district.

3. In case no provision is made at an annual meeting for the compensation of a clerk the board of education may fix the same.

4. Said board of education in every union free school district whose limits do not correspond with those of an incorporated village or city shall appoint a district treasurer, and a collector who shall hold office during the pleasure of the board. The board shall also fix the compensation of the treasurer.

5. Such treasurer and collector shall each, and within ten days after notice in writing of his appointment, duly served upon him, and before entering upon the duties of his office, execute and deliver to the said board of education a bond, with such sufficient penalty and sureties as the board may require, conditioned for

the faithful discharge of the duties of his office; and in case such bond shall not be given within the time specified, such office shall thereby become vacant, and said board shall thereupon, by appointment, fill such vacancy.

6. So much of this section as relates to the election of a clerk shall not apply to the towns of Cortlandt and White Plains in Westchester county.

This section was derived from Education Law of 1909, § 174. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 7 pt., as amended by L. 1896, ch. 264, § 13, and L. 1897, ch. 466, § 1. The report of the Board of Statutory Consolidation (1907) at page 1157 refers to certain changes made by the board as follows: "Consolidated School Law, tit. 8, § 7. provides that every union free school district whose boundaries are not the same as the boundaries of an incorporated village shall have a clerk of the board who shall be clerk of the district, and such clerk shall be appointed by the board of education. The law nowhere makes provision for a clerk of a board of education in a district whose boundaries are the same as the boundaries of an incorporated village. Such district is presumed, however, to have a secretary, as other provisions of the law relating to the issuance of bonds by a union free school district of this class contain a provision relative to the secretary of the board. In many districts the clerk of the village has acted as clerk of the board of education under the assumption that under a provision of the Village Law he is required to do so. The Village Law provides that the clerk of the village shall be the clerk of all boards, commissions, etc., of the village; but the board of education is not a part of the village. The school district is a separate and distinct corporation and the board of education is in no way connected with the village. It seems advisable to correct this matter by providing that in every union free school district the board shall appoint a clerk. This will not bar the board of the district whose boundaries are the same as the boundaries of an incorporated village from appointing the village clerk if they desire to do so. If this change is made in this section of the law it becomes necessary in the latter part of such section to insert this restrictive clause in the appointment of a district treasurer for the reason that the law provides that the treasurer of the village shall be the treasurer of the school district."

§ 255. Payments and reports by collector. 1. The collector shall keep in his possession all moneys received or collected by him by virtue of any warrant, or received by him from the county treasurer or board of supervisors for taxes returned as unpaid, or moneys apportioned by the state or raised by direct taxation for teachers' wages or library, and pay the same out upon the written order of a majority of the trustees.

2. When a treasurer shall have been elected in a district, the collector shall pay over the moneys collected by him by virtue of his warrant, to said treasurer as provided in section two hundred and fifty-one; and he shall report in writing, at the annual meeting, all his collections, receipts and disbursements, and shall report to the supervisor on or before the first Tuesday of March in

each year the amounts of school moneys in his hands not paid out on trustees' orders, and shall pay over to his successor in office, when such successor has duly qualified and given a bond as required by section two hundred and fifty-two, all moneys in his hands belonging to the district.

This section was Education Law of 1909, § 175, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 86.

Necessity of order before payment to trustees.— The trustees of a school district are not entitled to receive the moneys in the hands of the collector and he is not in default for his failure to pay it over until an order has been drawn upon him and presented. Woodhull v. Bohenblost, (1875) 4 Hun 399.

§ 256. Liability of collector for moneys lost. If by the neglect of the collector any moneys shall be lost to a school district, which might have been collected within the time limited in the warrant delivered to him for their collection, he shall forfeit to such district the amount of the moneys thus lost, and shall account for and pay over the same to the trustees of such district, in the same manner as if they had been collected.

This section was derived from Education Law of 1909, § 176. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 87.

§ 257. Remedy of trustees against collector in default. For the recovery of all such forfeitures, and of all balances, in the hands of the collector, which he shall have neglected or refused to pay to his successor, or to the treasurer of such district, the trustees, in their name of office, shall have their remedy upon the official bond of the collector, or any action and any remedy given by law; and they shall apply all such moneys, when recovered, in the same manner as if paid without suit.

This section was Education Law of 1909, § 177. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 88.

ARTICLE 10*

TRUSTEES

Section 270. Trustees constitute a board and body corporate.
271. Property held by trustees as corporation.
272. Powers and duties of a sole trustee.
273. Mode of exercise of trustees' powers.
274. Powers of trustees when vacancies on board exist.
275. Powers and duties of trustees.
276. Trustees' annual report.
277. Annual report of trustees of certain joint districts.
278. Trustees' annual report to district.
279. Penalty for failure of trustee to account.
280. Payment by trustee to successor.
281. Trustees' right †to action against predecessors.
282. Notice of non-payment of moneys apportioned.
283. Taxation for expenses incurred by trustees.
284. Issuing order in excess of available funds a misdemeanor.
285. Trustee must not be interested in district contracts.

§ 270. Trustees constitute a board and body corporate. The sole trustee or the trustees of a school district shall constitute a board for such district and such board is hereby created a body corporate.

This section was derived from Education Law of 1909, § 190, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 42.

Eligibility of school district trustee to office of supervisor: see TOWN LAW, § 81.

Trustees as a body corporate.— Under the Consolidated School Law of 1894, the trustees of a school district were constituted a body corporate, Beck v. Kerr, (1902) 75 App. Div. 173, 77 N. Y. S. 370; Bell v. New York, (1899) 46 App. Div. 195, 61 N. Y. S. 709, and were "clothed with all the powers incident thereto and necessary to the performance of the duties imposed upon them by the act," Ocorr, etc., Co. v. Little Falls, (1902) 77 App. Div. 592, 79 N. Y. S. 251, affirmed (1904) 178 App. Div. 622 mem. They could, even prior to this law, in certain cases and for certain purposes bind their district and create a corporate liability which would attach to their successors in their official capacity. Horton v. Garrison, (1856) 23 Barb. 176.

§ 271. Property held by trustees as corporation. All property which is now vested in, or shall hereafter be transferred to the

* This article was Education Law of 1909, article 8. Article 10 of the Education Law of 1909 was entitled "Town Clerks."

† So in original.

trustees of a district, for the use of schools in the district, shall be held by them as a corporation.

This section was derived without change from Education Law of 1909, § 191. That section came from Consolidated School Law, L. 1894, cn. 556, tit. 7, § 43.

§ 272. Powers and duties of a sole trustee. The sole trustee of a district shall possess all the powers and be subject to all the duties, liabilities and penalties which the law imposes upon a board of three trustees.

This section came, substantially, from Education Law of 1909, § 192. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 44.

§ 273. Mode of exercise of trustees' powers. 1. The powers committed by law to the trustees of a district must be exercised by them as a board. The board must meet for the transaction of business in accordance with notice of time and place.

2. In a board composed of three trustees, when two only meet to deliberate upon any matter, and the third, if notified, does not attend, or the three meet and deliberate thereon, the conclusion of two upon the matter, and their order, act or proceeding in relation thereto, shall be as valid as though it were the conclusion, order, act or proceeding of the three; and a recital of the two in their minute of the conclusion, act or proceeding, or in their order, act or proceeding of the fact of such notice, or of such meeting and deliberation, shall be conclusive evidence thereof.

3. A meeting of the board may be ordered by any member thereof, by giving not less than twenty-four hours' notice of the same.

This section, with a change in the phraseology of the first sentence, came from Education Law of 1909, § 193. That section was derived from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 45.

Power of two of three trustees to act.— Two of the three trustees of a school district have no power to sign a warrant for the collection of a school tax where it does not appear that the third trustee was out of the district or that any real attempt was made to procure his signature. A warrant so executed is invalid and the tax cannot be collected thereunder. Beck v. Kerr, (1902) 75 App. Div. 173, 77 N. Y. S. 370.

The action of two trustees without knowledge of the third, no notice having been given to him, is not an official act; but is an individual act of each of the two who do act, and is therefore void, and not binding upon the district. Matter of Humphrey, (1916) 94 Misc. 377, 157 N. Y. S. 807. And under a statute which provided that "whenever any power, authority, or duty is confided by law to three or more persons or officers . . . such power, authority, or duty may be exercised and performed by a majority of such persons or

officers upon a meeting of all the persons or officers so entrusted or empowered," it was held that a warrant for the collection of a tax issued by two of the three trustees of a school district without consultation with the third, was illegal and that they were liable for the value of property seized pursuant thereto. Whitford v. Scott, (1857) 14 How. Pr. 302. See also Keeler v. Frost, (1856) 22 Barb. 400.

Performance of ministerial duties.— If all of the trustees are present at the time a tax is levied and assessed and all concur therein, it is immaterial whether they are all present when the warrant is signed, this being merely a ministerial duty. Thomas v. Clapp, (1855) 20 Barb. 165.

Delegation of trustee's authority.— One of the three trustees of a school district cannot delegate his authority to make a tax assessment to the other two. Keeler v. Frost, (1856) 22 Barb. 400.

Presumption as to number present when official act is done.— In the absence of proof the presumption is that all of the trustees of a district were present at the time an official act was done. Doolittle v. Doolittle, (1860) 31 Barb. 312; McCoy v. Curtice, (1832) 9 Wend. 17, 24 Am. Dec. 113.

Effect of trustee's failure to attend meeting after notice.— Where a trustee is notified to attend a meeting and refuses, the effect is the same as if he had attended and dissented from the act of the majority. Horton v. Garrison, (1856) 23 Barb. 176.

§ 274. Powers of trustees when vacancies on board exist. 1. While there is one vacancy in the office of trustee, the two trustees shall have all the powers and be subject to all the duties and liabilities of the three. And while there are two such vacancies, the trustee in office shall have all the powers and be subject to all the duties and liabilities of the three, as though he were a sole trustee.

2. When a vacancy shall occur in the office of trustee, the board shall immediately call a special meeting of the district to supply such vacancy.

This section was, substantially, Education Law of 1909, § 194. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 46.

§ 275. Powers and duties of trustees. It shall be the duty of the trustees of a school district, and they shall have power:

1. To call special meetings of the inhabitants of such districts whenever they shall deem it necessary and proper.

2. To give notice of special, annual and adjourned meetings in the manner prescribed in this chapter, if there be no clerk of the district, or he be absent or incapable of acting, or shall refuse to act.

3. To make out a tax-list of every district tax voted by a district meeting, or authorized by law, which shall contain the names of all the taxable inhabitants residing in the district at the time of making out the list, and the amount of tax payable by each inhabitant, as directed in article fifteen of this chapter.

4. To purchase or lease such schoolhouse sites and other grounds to be used for playgrounds, or for agriculture, athletic center and social center purposes, and to purchase or build such schoolhouses, as a district meeting may authorize; to hire temporarily such rooms or buildings as may be necessary for school purposes; and to purchase such implements, supplies and apparatus as may be necessary to provide instruction in agriculture, or to equip and maintain playgrounds, and to conduct athletic and social center activities in the district, when authorized by a vote of a district meeting.

Subd. 4 was amended to read as above by L. 1913, ch. 221, § 2.

5. To have the custody and safe-keeping of the district schoolhouses, their sites and appurtenances.

6. To insure the school buildings, furniture and school apparatus in some company created by or under the laws of this state, or in an insurance company authorized by law to transact business in this state, and to comply with the conditions of the policy, and raise by a district tax the amount required to pay the premiums thereon.

7. To insure the school library in such a company in a sum fixed by a district meeting, and to raise the premium by a district tax, and comply with the conditions of the policy.

8. To contract with and employ as many legally qualified teachers as the schools of the district require; to determine the rate of compensation and the term of the employment of each teacher and to determine the terms of school to be held during each school year, and to employ persons to supervise, organize, conduct and maintain athletic, playground and social center activities when they are authorized by a vote of a district meeting as provided by law. The regular teachers of the school may be employed at an increased compensation or otherwise, and by separate agreement, written or oral, for one or more of such purposes.

Subd. 8 was amended to read as above by L. 1913, ch. 221, § 2.

9. To establish rules for the government and discipline of the schools.

10. To prescribe the course of studies to be pursued in such schools. Provisions shall be made for instructing pupils in all schools supported by public money, or under state control, in

physiology and hygiene, with special reference to the effect of alcoholic drinks, stimulants and narcotics upon the human system.

11. To pay, towards the wages of legally qualified teachers the public moneys apportioned to the district for such purpose by giving them orders therefor on the supervisor, or on the collector or treasurer of such district when duly qualified to receive and disburse the same.

12. To collect by district tax an amount sufficient to pay any judgment or the salaries of teachers for the current school year after deducting from the aggregate amount required for this purpose the amount of public money in the hands of the supervisor, collector or treasurer applicable to the payment of teachers' salaries and to pay the same by written orders on the collector or treasurer.

13. To draw upon the supervisor, the collector or treasurer, when duly qualified to receive and disburse the same, for the school moneys, by written orders signed by the sole trustee, or where there are three trustees, signed by a majority of said trustees as prescribed by subdivisions one and two of section three hundred and sixty of this chapter.

14. To keep each of the school-houses under their charge, and its furniture, school apparatus and appurtenances, in necessary and proper repair, and make the same reasonably comfortable for use, but shall not expend therefor without vote of the district an amount to exceed fifty dollars in any one year.

15. To make any repairs and abate any nuisances, pursuant to the direction of the school commissioner as herein provided, and provide fuel, stoves or other heating apparatus, pails, brooms and other implements necessary to keep the school-houses and the school-rooms clean, and make them reasonably comfortable for use, when no provision has been made therefor by a vote of the district, or the sum voted by the district for said purposes shall have proved insufficient.

16. To provide for building fires and cleaning the school-rooms, and for janitor work generally in and about the school-house, and pay reasonable compensation therefor.

17. To provide bound blank-books for the entering of their accounts, the records of the district and the proceedings of district and trustee meetings, and a list of the movable property of the district and they shall deliver such books to their successors in office.

18. To expend in the purchase of a dictionary, books, reproductions of standard works of art, maps, globes or other school apparatus, including implements, apparatus and supplies for instruction in agriculture, or for conducting athletic playgrounds and social center activities, a sum not exceeding twenty-five dollars in any one year, without a vote of the district.

Subd. 18 was amended to read as above by L. 1913, ch. 221; L. 1914, ch. 216.

19. To establish temporary or branch schools in such places in the district as shall best accommodate the children, and to hire rooms or buildings therefor and to fit up and furnish such rooms or buildings in a suitable manner for conducting school therein when it is shown:

a. That any considerable number of the children residing in a portion of the district are so remote from the school-house as to render it difficult for them to attend school in such school-house in inclement weather, or;

b. That the school building is overcrowded and proper accommodations are not afforded all the children of the district, or;

c. That for any other sufficient reason suitable and proper school facilities are not provided by the present school accommodations.

Any expenditure made or liability incurred in pursuance of this section shall be a charge upon the district.

Of this section subdivisions 1–3, 5–11, 13 were derived from Education Law of 1909, § 195; subdivisions 14–19 were derived from Education Law of 1909, § 196; subdivision 17 was derived from Education Law of 1909, § 197. Section 195 came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 47 pt., as amended by L. 1896, ch. 264, § 7, and L. 1906, ch. 150, § 2; section 196 came from Consolidated School Law, tit. 7, § 50 pt.; section 197 came from Consolidated School Law, tit. 7, § 53 pt.

Actions by school trustees: see Code Civ. Pro., § 1926 et seq.

Validity of act done in excess of authority.— Where a trustee of a school district had authority to make an assessment to provide for expenditures made by him, the fact that he made such assessment for a larger amount than was authorized did not render the whole tax void and enable a taxpayer who was within the jurisdiction of the trustee, and therefore subject to the assessment, to maintain an action of replevin against the trustee and collector to recover property seized in satisfaction of the tax. Norris v. Jones, (1893) 81 Hun 304, 27 N. Y. S. 209, 30 N. Y. S. 1134.

Validity of de facto trustee's contracts.— The de facto title of a school trustee is sufficient to bind his district with respect to a contract made by him within the scope of the authority usually exercised by a trustee and with one who acted in good faith. Smith v. Coman, (1900) 47 App. Div. 116, 62 N. Y. S. 106.

"Color of trustee's title" to validate contract.— In an action brought by a school teacher against the trustee of a school district to recover on a contract of hiring alleged to have been made by one David Benjamin, as trustee,

it appeared "that at a school meeting duly held in the district, Aug. 30, 1887, there were present eight men and some boys; a chairman was elected, and the district clerk was present. The trustee of the preceding year, having read his report, said that the next thing in order was to elect a trustee, and, turning to one Buckley, suggested that he act as trustee. The latter said, 'No, let Dave Benjamin have it.' Someone seconded it; thereupon David Benjamin, who seems to have been somewhat under the influence of liquor, immediately jumped up and said 'All in favor of Dave Benjamin being trustee say aye.' Someone responded aye. Then David Benjamin said, 'I am trustee.' No negative vote was called for. The chairman was not requested to nor did he call for any vote on the subject. The meeting then proceeded to the election of a trustee, and James Benjamin was elected in the usual manner. He entered upon the duties of his office, and three days later David Benjamin called upon him, asserted his right to the office of trustee, and, by means of a threat, induced James Benjamin to let him take the district books." On these facts, it was held that "there was no color of election of David Benjamin at the meeting, and that he took from what occurred there no colorable right to the office." There was no ground, therefore, for considering him as a de facto trustee so as to validate the contract in question. Hand v. Deady, (1894) 79 Hun 75, 29 N. Y. S. 633.

When regularity of election may be questioned.— Where a person acting as the trustee of a school district hired a teacher, and all of the inhabitants of the district patronized the school by sending their children to it, it was held that an irregularity in the election of such trustee could not be raised for the first time in an action brought by the teacher against the trustee's successor in office to recover the value of her services under the contract. De Wolf v. Watterson, (1885) 35 Hun 111.

Power to place property on tax lists.— The trustees have no authority to place upon the tax lists property used in connection with a special franchise which has come into existence since the last town assessment-roll. Op. Atty.-Gen. (1913) 526.

Power to accept conditional title to real estate.— If so authorized by the voters of their district, the trustees may purchase property for a school site, on an express condition "that the title and estate of the grantee and his successor, in the said premises, should cease when the said use should cease, and should thereupon be vested in the grantor, his heirs and assigns." Albright v. Riker, (1880) 22 Hun 367, cited 96 N. Y. 643.

Power to convey marketable title to school property.— Where real property was conveyed to the trustees of a school district by a "full covenant warranty deed," the habendum clause of which read "to have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said parties of the second part, their successors and assigns, for the uses and purposes of school district No. 10, of the said town of Greenburgh, upon which to erect a school house and other appurtenances for said school district No. 10, in said town of Greenburgh, forever," a claim that the deed was either in trust or that it operated "by way of a dedication of the property to a public use," or that the clause in question was effective as a covenant or condition or that it "qualified the duration of the estate as a limitation upon the time of enjoyment," was untenable. The trustees could therefore convey a good and marketable title. Board of Education v. Reilly, (1902) 71 App. Div. 468, 75 N. Y. S. 876.

Duty to insure school property.— It is the duty of school district trustees to raise funds and insure school property even though not authorized by a district meeting. In case of loss resulting from neglect to do so, the trustees are personally responsible to the district. Op. Atty.-Gen. (1912) 218.

Power to bind successors in office.—A contract made by a school trustee with a teacher for a period extending beyond his term of office as such trustee was held valid and binding upon his successor. Gillis v. Space, (1872) 63

Barb. 177. See also Silver v. Cummings, (1831) 7 Wend. 181; Williams v. Keech, (1843) 4 Hill 168. But see § 561.

Authority to employ unlicensed teacher.—A trustee of a school district has no authority to contract for the services of an unlicensed teacher, and an executory agreement engaging the services of such a person is invalid and not binding upon the school district. Blandon v. Moses, (1883) 29 Hun 606; Gillis v. Space, (1872) 63 Barb. 177.

Power to execute promissory note for teacher's wages.— The trustees of a school district may execute a promissory note to a teacher in payment for wages already earned and such a note executed by them as "trustees" is binding not as their individual obligation but is binding on and enforceable against their successors in office. Horton v. Garrison, (1856) 23 Barb. 176.

Power to discharge teacher.— The trustee of a school district has the right to discharge a teacher before the expiration of his time even though he has a valid contract and has in no way violated it and if the teacher refuses to turn over possession of the school building or the key thereto he is liable as a trespasser. The teacher may however have a right of action for breach of his contract. Kelderhouse v. Brown, (1886) 17 Abb. N. Cas. 401. See also Gildersleeve v. Board of Education, (1863) 17 Abb. Pr. 201; People v. Board of Education, (1874) 3 Hun 177.

Authority to employ librarian.— The trustees of a school district have authority to contract with a person to act as the librarian of a library which is appurtenant to a public school situated within their district. Bell v. New York, (1899) 46 App. Div. 195, 61 N. Y. S. 709.

Power to provide necessary supplies.— The trustee of a school district is "authorized to make repairs and abate any nuisance and provide fuel, pails, brooms and other implements necessary to keep the school house clean and make it reasonably comfortable for use. He may also provide for building fires and cleaning the school room. . . . When the trustee is required or authorized by law to incur any expense for school purposes, the statute makes it a charge upon the district, and he may raise the amount thereof by tax in the same manner as if a definite sum to be raised had been voted by a district meeting." Norris v. Jones, (1894) 81 Hun 304, 27 N. Y. S. 209, 30 N. Y. S. 1134.

The right to recover for rent of room and supplies furnished.— Where a trustee supplies a room in his own premises for the purpose of holding school there in the absence of a schoolhouse in the district, he is entitled to recover from the district a reasonable rental therefor and also the reasonable value of any necessary supplies he furnishes in connection with the school. De Wolf v. Watterson, (1885) 35 Hun 111.

Preferential employment of veterans as janitors.—A union free school is not "a public department of the state or village" so as to entitle a war veteran to preferential employment as janitor in a school building. People v. Hayward, (1897) 19 App. Div. 46, 46 N. Y. S. 1083.

Applicability of the Labor Law to janitors in public schools.— The provisions of the Labor Law, providing that eight hours shall constitute a legal day's work, does not apply to janitors in the public schools of the city of Syracuse. Neither does it apply to janitors in common schools operating under the general Education Law of the state. Op. Atty.-Gen. (1912) 132.

Reimbursement of officer for defense of personal action.— The trustees of a school district have no duty or right to expend the public moneys to reimburse one of its officers for the expenses incurred by him in defending an action for libel, brought against him on account of matters relative to the business and affairs of the district. People v. Skinner, (1902) 74 App. Div. 58, 77 N. Y. S. 36.

§ 276. Trustees' annual report. The trustees of each district shall make a full report to the commissioner of education upon any particular matter relating to their schools whenever such report shall be required by said commissioner. The trustees of each school district shall, on the first day of August in each year, make to the school commissioner a report in writing for the year ending on July thirty-first preceding. Such report shall be in such form as the commissioner of education shall prescribe. In every case the trustees shall sign and certify to said report and deliver it to the clerk of the town, in which the school-house of the district is situated; and every such report shall certify:

1. The whole time school has been maintained in their district during the year ending on the day previous to the date of such report, and stating what portion of the time such school has been taught by qualified teachers, and the whole number of days, *in cluding holidays, in which the school was taught by qualified teachers.

2. The amount of their drafts upon the supervisor, collector or treasurer for the payment of teachers' salaries during such year, and the amount of their drafts upon him for the purchase of books and school apparatus during such year, and the manner in which such moneys have been expended.

3. The number of children taught in the district school during such year by qualified teachers, and the aggregate days' attendance of all such children upon the school.

4. The number of children residing in their district, over five and under eighteen years of age, who shall have been, on the thirtieth day of August last preceding the date of such report, legal residents of such district. Children supported at a county poor-house or an orphan asylum shall not be included in such enumeration.

5. The number of vaccinated and unvaccinated children of school age in their respective districts.

6. The amount of money paid for teachers' salaries, in addition to the public money paid therefor, the amount of taxes levied in said district for purchasing school-house sites, for building, hiring, purchasing, repairing and insuring school-houses, for fuel, for school libraries, or for any other purpose allowed by law.

7. Such additional information in relation to the schools under

* So in original.

their management and control as the commissioner of education shall require.

This section was derived from Education Law of 1909, § 198, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, §§ 59, 60. The report of the Board of Statutory Consolidation (1907) at page 1158 refers to certain changes made by the board as follows: "Consolidated School Law, tit. 7, § 60, substituted for same, § 59, subd. 4, which is covered by said § 60. Maximum age of children to be reported changed from twenty-one to eighteen years to conform to Consolidated School Law, tit. 2, § 13 (§ 466 hereof), which bases the apportionment of school moneys on children between the ages of five and eighteen years."

Nature of trustees' report.— The provisions of this section "contemplate an exact and specific statement of the receipts and payments by the district, including the amounts of drafts upon the supervisor and collector, respectively." Wise v. Bull, (1913) 80 Misc. 205, 141 N. Y. S. 917.

§ 277. Annual report of trustees of certain joint districts. Where a school district lies in two or more counties, its trustees shall file their annual report in the office of the clerk of the town in which the principal schoolhouse of the district is situated.

This section was derived from Education Law of 1909, § 199. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 61.

§ 278. Trustees' annual report to district. The trustees shall render to the district, at its annual meeting, a just, full and true account in writing, of all moneys received by them respectively for the use of the district, or raised or collected by taxes, the preceding year, and of the manner in which the same shall have been expended, and showing to which of them an unexpended balance, or any part thereof, is chargeable; and of all drafts or orders made by them upon the supervisor, collector, treasurer or other custodian of moneys of the district; and a full statement of all appeals, actions or suits and proceedings brought by or against them, and of every special matter touching the condition of the district.

This section was, substantially, Education Law of 1909, § 200. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 55.

Misappropriation and falsification of accounts by public officers: see PENAL LAW, § 1865.

§ 279. Penalty for failure of trustee to account. By a wilful neglect or refusal to render such account, a trustee forfeits any unexpired term of his office, and becomes liable to the trustees for any district moneys in his hands.

This section was Education Law of 1909, § 201. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 57.

§ 280. Payment by trustee to successor. An outgoing trustee shall forthwith pay, to his successor or any other trustees of the district in office, all moneys in his hands belonging to the district.

This section was Education Law of 1909, § 202. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 56.
Section 280 of Education Law of 1909 is now covered by section 360.

§ 281. Trustees' right of action against predecessor. The trustees in office shall sue for and recover any district moneys in the hands of any former trustee, or of his personal representatives, and apply them to the use of the district.

This section was Education Law of 1909, § 203. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 58.
Section 281 of the Education Law of 1909 is now covered by section 361.

§ 282. Notice of non-payment of moneys apportioned. If any portion of the moneys apportioned to the district shall not be paid by the supervisor, the collector or treasurer, upon the due requirement of the trustees, they shall forthwith notify the treasurer of the county and the commissioner of education of the fact.

This section was Education Law of 1909, § 204. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 54.
Section 282 of the Education Law of 1909 is now covered by section 362.

§ 283. Taxation for expenses incurred by trustees. When trustees are required or authorized by law, or by a vote of their district, to incur any expenses for such district, and when any expenses incurred by them are made, by express provision of law, a charge upon such district, they may raise the amount thereof by tax in the same manner as if the definite sum to be raised had been voted by a district meeting.

This section was Education Law of 1909, § 205. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 51.
Section 283 of Education Law of 1909 is now covered by section 363.

§ 284. Issuing order in excess of available funds a misdemeanor. 1. The trustees of a school district shall not issue an order or draft upon a supervisor, collector or treasurer for the payment of the salary of a teacher unless there shall be in the hands of such supervisor, collector or treasurer at the time sufficient money belonging to the district to meet such order or draft.

2. A violation of this section by the trustees of a district shall be a misdemeanor.

Section 284 of the Education Law of 1909 is now covered by section 364.

School district trustee not to draw draft on supervisor in certain cases: see PENAL LAW, § 1871.

§ 285. Trustees must not be interested in district contracts. No trustee shall be personally interested directly or indirectly in any contract which he makes in behalf of the district.

Section 285 of the Education Law of 1909 is now covered by section 365.

School officer not to be interested in certain contracts: see PENAL LAW, § 1868.

City officers not to be interested in contracts: see GENERAL CITY LAW, § 3.

ARTICLE 11*

Boards of Education

Section 300. Board of education corporate bodies.
301. Board of education in district whose boundaries are not coterminous with those of an incorporated village or city.
302. Board of education in district whose boundaries are coterminous with those of an incorporated village or city.
303. Provisions for separate elections in certain districts.
304. Determination of election disputes.
305. Election and organization of board of education in new district where union free school district containing two incorporated villages is divided.
306. Annual meetings of boards of education.
307. Change in number of members of board of education in union free school district whose †boundaires are coterminus with those of an incorporated village or city.
308. Change in number of members of board of education in union free school district whose boundaries are not coterminous with those of an incorporated village or city.
309. Power of removal of member of board of education.
310. Powers and duties of boards of education.
311. Night schools; kindergartens.
312. Appointment of superintendent of schools.
313. Regular meetings; visitation of schools.
314. Limitation upon expenditures.
315. Deposit, custody and payment of moneys in cities and villages.
316. Moneys and accounts in union free school districts whose boundaries are not the same as the boundaries of incorporated cities and villages.
317. Boards of education have powers of trustees of common schools and trustees of academies.

* This article was Education Law of 1909, art. 9. Article 11 of the Education Law of 1909 was "Supervisors."

† So in original.

Section 318. Academy may be adopted as academic department.
319. Contracts with academies.
320. Retransfer of academy to its former trustees.
321. Records; reports.
322. Reports to commissioner of education.
323. Estimated expenses for ensuing year.
324. Vote upon school taxes.
325. Levy of tax for certain purposes without vote.
326. Reference to commissioner of education.
327. Corporate authorities must raise tax certified by board of education.
328. Application of this article.

§ 300. Boards of education corporate bodies. The board of education of each union free school district or city is hereby created a body corporate and it shall, at its first meeting and at each annual meeting thereafter, elect one of its members president.

This section was Education Law, § 200. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 7 pt., as amended by L. 1896, ch. 264, § 13, and L. 1897, ch. 466, § 1.

Section 300 of the Education Law of 1909 was covered by section 380 of Education Law of 1910 (ch. 140). See note following the schedule of sections of article 14, infra.

Board of education as a body corporate.—A board of education created under L. 1864, ch. 555, was a corporation (Porter v. Robinson, (1883) 30 Hun 209), and the powers in terms given by the Act to the board were given to the body corporate. Bassett v. Fish, (1878) 75 N. Y. 303, reversing 12 Hun 209. Under the former Acts school districts were frequently spoken of as "quasi corporations." Ellis v. Sharp, (1886) 42 Hun 179, 4 N. Y. St. Rep. 687. And a distinction was sometimes made in this respect between the board of education of a union free school district and the trustees of a common school district. Thus it has been said: "The Board of Education of a union free school is a corporation proper and not a quasi corporation, like the trustees of the ordinary school district." Bassett v. Fish, (1878) 75 N. Y. 303, reversing 12 Hun 209; Chrigstrom v. McGregor, (1893) 74 Hun 343, 26 N. Y. S. 517.

Board of education of New York city.— The board of education of New York is "a branch of the state government, charged by the state with the administration of its educational system in the city of New York." Ackley v. Board of Education, (1916) 159 N. Y. S. 249. To the same effect see Ham v. Mayor, (1877) 70 N. Y. 459, affirming 5 J. & S. 458; Gunnison v. Board of Education, (1903) 176 N. Y. 11, 68 N. E. 106, affirming 80 App. Div. 480, 81 N. Y. S. 181.

§ 301. Board of education in district whose boundaries are not coterminous with those of an incorporated village or city. 1. Whenever a union free school district shall be established pursuant to the provisions of sections one hundred and forty-one to one

hundred and forty-five of this chapter and the boundaries of such district shall not be coterminous with the boundaries of an incorporated city or village, it shall be the duty of the meeting at which such union free school district is established to elect by ballot not less than three nor more than nine trustees, who shall, by the order of such meeting, be divided into three classes, the first to hold until one, the second until two, and the third until three years from the first Tuesday of August next following, except as in the next section provided. Thereafter there shall be elected in such districts, at the annual meeting, trustees to supply the places of those whose terms of office, by the classification aforesaid, expire.

2. The trustees thus elected, shall enter at once upon their offices, and the office of any existing trustees in such districts, before the establishment of a union free school therein, shall cease, except for the purposes stated in section one hundred and thirty-five of this chapter. The said trustees and their successors in office shall constitute the board of education of the union free school district thus established.

Subdivision 2 was amended to read as above by L. 1910, ch. 442. The amendment corrected errors by substituting the word "section" for "secttion," near end of first sentence of the subdivision, and "their" for "this" in the second sentence.

This section was, substantially, Education Law of 1909, § 221. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 5 pt., as amended by L. 1896, ch. 264, § 12.

The report of the Board of Statutory Consolidation (1907) at page 1158 refers to certain changes made by the board as follows: "Part relating purely to district organization is contained in § 41, art. 2, 'School districts.' Part relating to eligibility of member of board is contained in § 149." The reference to section 149 in the last line refers to the present section 232. Section 301 of the Education Law of 1909 was covered by section 381 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

§ 302. Board of education in district whose boundaries are coterminous with those of an incorporated village or city. Whenever said board of education shall be constituted for any district whose limits correspond with those of any incorporated village or city, the trustees so elected shall, by the order of such meeting, be divided into three classes: The first class to serve until one; the second, until two; and the third, until three years after the date of the next charter election in such village or city, and their regular term of service shall be computed from the several dates of such charter elections. Thereafter, there shall be annually

elected in such villages and cities, at the charter elections, by separate ballot, to be indorsed " school trustee," in the same manner as the charter officers thereof, trustees of the said union free schools, to supply the places of those whose terms by the classification aforesaid expire.

This section was Education Law of 1909, § 222. That section came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 6.

Section 302 of the Education Law of 1909 was covered by section 382 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

§ 303. Provisions for separate elections in certain districts. 1. In union free school districts whose limits do not correspond with those of an incorporated village or city, and in which the number of children of school age exceeds three hundred, as shown by the last annual report of the board of education to the school commissioner, the qualified voters of any such district may by a vote of a majority of those present and voting, at any annual meeting, or at any duly called special meeting, to be ascertained by taking and recording the ayes and noes, determine that the election of the members of the board of education shall be held on the Wednesday next following the day designated by law for holding the annual meeting of said district.

2. Until such determination shall be changed, such election shall be held on the Wednesday next following the day on which such annual meeting of such district shall be held between the hours of twelve o'clock noon and four o'clock in the afternoon at the principal school-house in the district, or at such other suitable place as the trustees may designate.

3. When the place of holding such election is other than at the principal school-house, the trustees shall give notice thereof by the publication of such notice, at least one week before the time of holding such election, in some newspaper published in the district, or by posting the same in three conspicuous places in the district. The trustees may, by resolution, extend the time of holding the election from four o'clock until sunset.

4. Such members of the board of education as may be present, shall act as inspectors of election. If a majority of such board shall not be present at the time of opening the polls, those members of the board in attendance may appoint any of the legal voters of the district present, to act as inspectors in place of the

absent trustees; and if none of the board of education shall be present at the time of opening the polls, the legal voters present may choose three of their number to act as inspectors.

5. The clerk of the board of education shall attend at the election and record in a book, to be provided for that purpose, the name of each elector as he deposits his ballot. If the clerk of the board of education shall be absent, or shall be unable or refuse to act, the board of education or inspectors of election shall appoint some person who is a legal voter in the district to act in his place. Any clerk or acting clerk who shall neglect or refuse to record the name of a person whose ballot is received by the inspectors, shall be liable to a fine of twenty-five dollars, to be sued for by the supervisor of the town.

6. The board of education shall, at the expense of the district, provide a suitable box in which the ballots shall be deposited as they are received. Such ballots shall contain the names of the persons voted for, and shall designate the office for which each of said names is voted. The ballots may be either written or printed, or partly written and partly printed. The inspectors immediately after the close of the polls shall proceed to canvass the votes. They shall first count the ballots to determine if they tally with the number of names recorded by the clerk, and if they exceed that number, enough ballots shall be withdrawn to make them correspond. Such inspectors shall count the votes and announce the result. The persons having a plurality of the votes respectively for the several offices shall be elected, and the clerk shall record the result of such ballot and election as announced by the inspectors.

Subdivision 6 was amended by L. 1910, ch. 442. The amendment substituted the word "plurality" for "majority" in the last sentence of the subdivision.

7. Whenever the time for holding such election, as aforesaid, shall pass without such election being held in any such district, a special election shall be called by the board of education, but if no such election be called by said board within twenty days after such time shall have passed, the school commissioner or the commissioner of education may order any inhabitant of said district to give notice of such election in the manner prescribed by section one hundred and ninety-three; and the officers elected at

such special election shall hold their respective offices only until the next annual election, and until their successors are elected and shall have qualified, as in this chapter provided.

8. The foregoing provisions shall not apply to union free school districts in cities, nor to union free school districts whose boundaries correspond with those of an incorporated village, nor to any school district organized under a special act of the legislature, in which the time, manner and form of the election of district officers shall be different from that prescribed for the election of officers in union free school districts, organized under the general law, nor to any of the union free school districts in the counties of Suffolk, Chenango, Warren, Erie and Saint Lawrence.

This section was Education Law of 1909, § 223, except that the provision in subdivision 6 which now reads, "The persons having a plurality of the votes cast . . .," formerly read, "The persons having a majority of the votes cast . . ." Subdivision 5 of the Education Law of 1909, § 223, was omitted from the present section, and made section 304. The division of the matter of the present section into subdivisions and the numbering of those subdivisions is different from the arrangement of the section in the Education Law of 1909. Section 223 of the Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 14 pt., as amended by L. 1895, ch. 853, § 1; L. 1896, ch. 196, § 1, and L. 1897, ch. 466, § 2. The report of the Board of Statutory Consolidation (1907) at page 1158 refers to certain changes made by the board as follows: "Part relating to challenged vote and penalty contained in §§ 93, 94." The reference to sections 93, 94 in the last line refers to present sections 204, 205.

Section 303 of the Education Law of 1909 was covered by section 383 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

Eligibility of members of the board to election to assembly.—A member of the board of education of the city of New York is not an officer of the city of New York so as to render a person holding such office within one hundred days prior to his election as member of the assembly ineligible to the latter office under the provisions of article III, section 8 of the constitution. Op. Atty.-Gen. (1912) 145.

§ 304. Determination of election disputes. All disputes concerning the validity of any district election or of any of the acts of the officers of such election shall be referred to the commissioner of education for determination and his decision in the matter shall be final and not subject to review. The commissioner may in his discretion order a new election.

This section was Education Law of 1909, § 223, subd. 5, with the exception that the last three words, "in any district," of the former section were omitted. Education Law of 1909, § 223, subd. 5, came from Consolidated School Law, L. 1892, ch. 556, tit. 8, § 14, as amended by L. 1896, ch. 196, § 1, and L. 1897, ch. 466, § 2.

Section 304 of the Education Law of 1909 was covered by section 384 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

§ 305. Election and organization of board of education in new district where union free school district containing two incorporated villages is divided. 1. Within ten days after the school commissioner shall have designated any separate school district organized under the provisions of sections one hundred and thirty and one hundred and thirty-one of this chapter, he shall call a special meeting of the qualified voters of such school district at a time and place to be named by him to elect a board of education to consist of six members, two of whom shall be elected for one year, two for two years and two for three years from the date of the annual school meeting next succeeding such special meeting. The call for such special meeting shall be published in the manner provided in section one hundred and thirty for calling a special meeting to determine as to whether the school district shall be divided.

2. The school commissioner shall call such special meeting to order and the voters present shall elect a chairman and secretary for such meeting and appoint three tellers to canvass the votes cast. After the votes shall have been canvassed the chairman and secretary shall forthwith certify the result of such canvass to the said school commissioner, who shall within five days thereafter convene the members of the board of education, shown by said certificate to have been elected, for the purpose of organization, and said certificate of the result of such canvass shall thereupon become a part of the record of said school district.

This section was, in substance, Education Law of 1909, § 224. The numbering of sections referred to in the section were changed to conform to the numbering of the sections as rearranged in the present law. The section came from L. 1903, ch. 125, § 3.

Section 305 of the Education Law of 1909 was covered by section 385 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

§ 306. Annual meetings of boards of education. 1. The annual meeting of the board of education of every union free school district whose limits do not correspond with those of an incorporated village or city shall be held on the first Tuesday in August of each year, except in districts in which the annual

meeting is held on the first Tuesday in August, in which case the annual meeting of the board of education of such district shall be held on the second Tuesday in August.

2. The annual meeting of the board of education of every union free school district whose limits correspond with those of an incorporated village or city shall be held on the Tuesday next after the election of the members of such board at the annual charter election of the village or city.

Amended to read as above by L. 1911, ch. 830; L. 1915, ch. 232.
This section was Education Law of 1909, § 225, and came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 13, subds. 1, 2.
Section 306 of the Education Law of 1909 is now covered by section 386 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

§ 307. Change in number of members of board of education in union free school district whose boundaries are coterminous with those of an incorporated village or city. The number of members of the board of education of a union free school district whose limits correspond with those of an incorporated village or city, may be increased to not more than nine or decreased to not less than three in the following manner:

1. The board of education of such union free school district, shall, upon the application of at least fifteen resident taxpayers of such district, submit to a special meeting, held at least thirty days prior to the annual charter election, in such village or city, a proposition for the increase or decrease of the number of members of the board of education to a number specified in the proposition.

2. Such special meeting shall be called and held in the manner prescribed by subdivision two of section one hundred and ninety-three of this chapter.

3. If such proposition is adopted and it is determined thereby to increase the number of members of the board of education of such district, there shall be elected at the next ensuing annual village or city election, a sufficient number of members of the board of education so that the total number of members of the board will be the number specified in such proposition. Such additional members shall be elected for such terms so that as nearly as possible the terms of one-third of the members of such

board will expire annually. Successors to such additional members shall be elected in like manner.

4. If such proposition is adopted and it is determined thereby to decrease the number of the board of education in such district, no members of the board of education of such district shall thereafter be elected until by expiration of term the number of members of the board of education will be less than the number specified in such proposition; and thereafter the number of members of the board of education of such district shall be the number specified in such proposition. Not more than one proposition under this section shall be submitted in any calendar year.

This section was Education Law of 1909, § 226, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 6, subd. 1, as added by L. 1903, ch. 489, § 1.

Section 307 of the Education Law of 1909 was covered by section 387 of Education Law of 1910, (ch. 140). See note to schedule of sections of article 14, infra.

§ 308. Change in number of members of board of education in union free school district whose boundaries are not coterminous with those of an incorporated village or city. 1. The number of members of the board of education of a union free school district whose limits do not correspond with those of an incorporated village or city may be increased or decreased at an annual meeting by a majority vote of the qualified voters present and voting to be ascertained by taking and recording the ayes and noes. The number of such board shall not be increased to more than nine nor decreased to less than three.

2. No vote shall be taken upon the proposition to increase or decrease the number of members of such board of education unless the notice of the annual meeting shall contain a statement to the effect that the voters of such district will vote upon such proposition. The board of education of any such district shall, upon the application of at least fifteen voters of such district, include in the notice of the annual meeting a statement that the proposition to increase or decrease such board will be presented to the annual meeting for determination. If the board refuses or fails to give such notice the notice may be given in such manner as the commissioner of education may direct.

3. If any such board shall consist of less than nine members and such meeting shall determine to increase the number, such meeting

shall elect the additional number so determined upon and shall divide such number into three classes, the first to hold office one year, the second two years and the third three years.

4. If such meeting shall determine to diminish the number of members composing such board, no election shall be held in such district to fill the vacancies of the outgoing members until the number of such members shall correspond to the number which such meeting shall determine to compose such board.

This section was Education Law of 1909, § 227, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 31, as amended by L. 1903, ch. 463, § 1.

Section 308 of the Education Law of 1909 was covered by section 388 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

§ 309. Power of removal of member of board of education. For cause shown, and after giving notice of the charge and opportunity of defense, the commissioner of education may remove any member of a board of education. Wilful disobedience of any lawful requirement of the commissioner of education or a want of due diligence in obeying such requirement or wilful violation or neglect of duty is cause for removal.

This section was Education Law of 1909, § 228, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 29.

Section 309 of the Education Law of 1909 was covered by section 389 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

§ 310. Powers and duties of boards of education. The said board of education of every union free school district shall have power, and it shall be their duty:

1. To adopt such by-laws and rules for its government as shall seem proper in the discharge of the duties required under the provisions of this chapter.

2. To establish such rules and regulations concerning the order and discipline of the schools, in the several departments thereof, as they may deem necessary to secure the best educational results.

3. To prescribe the course of study by which the pupils of the schools shall be graded and classified, and to regulate the admission of pupils and their transfer from one class or department to another, as their scholarship shall warrant.

4. To prescribe the text-books to be used in the schools, and to

compel a uniformity in the use of the same, pursuant to the provisions of this chapter, and to furnish the same to pupils out of any moneys provided for that purpose.

5. To make provision for the instruction of pupils in physiology and hygiene with special reference to the effect of alcoholic drinks, stimulants and narcotics upon the human system.

6. To purchase sites, or additions thereto, for recreation grounds, for agricultural purposes, and for schoolhouses for the district, when designated by a meeting of the district; and to construct such schoolhouses and additions thereto as may be so designated; to purchase furniture and apparatus for such schoolhouses, and to keep the furniture and apparatus therein in repair; and, when authorized by such meeting, to purchase implements, supplies, and apparatus for agricultural, athletic, play-ground, and social center purposes.

Subdivision 6 was amended to read as above by L. 1913, ch. 221, §§ 1–3.

7. To hire rooms in which to maintain and conduct schools when the rooms in the school-houses are overcrowded, or when such school-houses are destroyed, injured or damaged by the elements, and to fit up and furnish such rooms in a suitable manner for conducting schools therein.

8. To insure the school-houses and their furniture, apparatus and appurtenances, and the school library, in some company created by or under the laws of this state, or in some insurance company authorized by law to transact business in this state, and to comply with the conditions of the policy, and raise the sums paid for premiums by district tax.

9. To take charge and possession of the school-houses, sites, lots, furniture, books, apparatus, and all school property within their respective districts; and the title of the same shall be vested respectively in said board of education.

10. To sell, when authorized by a vote of the qualified voters of the school district, any former school site or lot, or any real estate the title to which is vested in the board, and the buildings thereon, and appurtenances or any part thereof, at such price and upon such terms as said voters shall prescribe, and to convey the same by deed to be executed by the board or a majority of the members thereof. Also to exchange real estate belonging to the

district for the purpose of improving or changing school-house sites.

11. To take and hold for the use of the said schools or of any department of the same, any real estate transferred to it by gift, grant, bequest or devise, or any gift, legacy or annuity, of whatever kind, given or bequeathed to the said board, and apply the same, or the interest or proceeds thereof, according to the instructions of the donor or testator.

12. To have in all respects the superintendence, management and control of said union free schools, and to establish therein, in conformity with the regents rules, an academic department, whenever in their judgment the same is warranted by the demand for such instruction; to receive into said union free schools any pupils residing out of said district, and to regulate and establish the tuition fees of such nonresident pupils in the several departments of said schools.

13. To provide fuel, furniture, apparatus and other necessaries for the use of said schools.

14. To appoint such librarians as they may from time to time deem necessary.

15. To contract with and employ such persons as by the provisions of this chapter are qualified teachers, to determine the number of teachers to be employed in the several departments of instruction in said school, and at the time of such employment, to make and deliver to each teacher a written contract as required by section five hundred and sixty-one of this chapter; and employ such persons as may be necessary to supervise, organize, conduct and maintain athletic, playground and social center activities, or for any one or more of such purposes. The regular teachers of the school may be employed at an increased compensation or otherwise, and by separate agreement, written or oral, for one or more of such purposes.

Subdivision 15 was amended by L. 1913, ch. 221.

16. To fill any vacancy which may occur in said board by reason of the death, resignation, removal from office or from the school district, or refusal to serve, of any member or officer of said board; and the person so appointed in the place of any such member of the board shall hold his office until the next annual election of trustees.

17. To remove any member of their board for official misconduct. But a written copy of all charges made of such misconduct shall be served upon him at least ten days before the time appointed for a hearing of the same; and he shall be allowed a full and fair opportunity to refute such charges before removal.

18. To provide and maintain suitable and convenient water-closets as provided in section four hundred and fifty-seven of this chapter.

19. To borrow money in anticipation of taxes remaining uncollected which have been levied by such district for the current fiscal year, and not in excess thereof, whenever in the discretion of the board of education it shall be necessary to do so for the purpose of paying the current expenses of the district for such current fiscal year, by issuing certificates of indebtedness, in the name of the board of education, signed by the president and clerk thereof, which certificates must be payable within such current fiscal year or within nine months thereafter, and shall bear interest at a rate not exceeding six per centum per annum.

20. To raise by tax upon the property of the district any moneys required to pay the salary of teachers employed after applying thereto the school moneys apportioned to the district by the state.

21. To provide for the medical inspection of all children in attendance upon schools under their supervision whenever in their judgment such inspection shall be necessary and to pay any expense incurred therefor out of funds authorized, by the voters of the district or city or which may properly be set aside for such purpose by the common council or the board of estimate and apportionment of a city. [1] Provided, however, that no such funds shall be appropriated or authorized by the voters of a union free school district situate wholly within a city of the third class, unless the board of education shall incorporate in the notice of the annual meeting or election a statement to the effect that at such meeting or election a proposition to appropriate such funds will be voted upon, specifying the amount.

Subdivision 21 was added by L. 1910, ch. 602, and amended to read as above by L. 1912, ch. 215. The change is indicated in the footnote.

This section was derived, except subdivision 20, from Education Law of 1909, § 229, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 15, as amended by L. 1896, ch. 264, § 16; L. 1903, ch. 233, § 1, and L. 1906, ch. 150, § 3.

[1] Remainder of subdivision new.

Section 20 was derived from Education Law, § 240, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 11.

The report of the Board of Statutory Consolidation (1907) at page 1158 refers to certain changes made by board as follows: "New matter 'to determine the number of teachers to be employed' is from Consolidated School Law, tit. 7, § 47, subd. 9, as applied by same, tit. 8, § 16, 'boards of education shall possess all the powers . . . in respect to common schools . . . in any union free school in said district, which the trustee of common schools possess under this chapter.'" This note refers to subdivision 11 of section 222 of the Education Law of 1909, now subdivision 20 of section 310 of the present law.

Section 310 of the Education Law of 1909 was covered by section 390 of Education Law of 1910, (ch. 140). See note to schedule of sections of article 14, infra.

School savings banks: see BANKING LAW, § 279.

Source and general nature of powers conferred.—A board of education being created a body corporate is clothed with all the powers incident thereto and necessary to the performance of the duties imposed upon it by law. Ocorr, etc., Co. v. Little Falls, (1902) 77 App. Div. 592, 79 N. Y. S. 251, affirmed (1904) 178 N. Y. 622, 70 N. E. 1104. "Union free school districts as a result of a general power given by law to the inhabitants of one or more school districts, are solely the creatures of statute, and must look to the statute for all of their powers and the form of their existence. So also must the liabilities of them and of their officers and the mode of enforcing those liabilities be measured greatly by the statute." Bassett v. Fish, (1878) 75 N. Y. 303.

Power to restrain withdrawal of village from school district.—A union free school district, even though it be a municipal corporation, cannot maintain an action to restrain the unauthorized withdrawal of a village from such district, since such withdrawal, if it does not interfere with or appropriate the school buildings or property, only imposes an additional burden upon the taxpayers of the district, with whose interests the school district itself is not concerned. Union Free School District v. Glen Park, (1905) 109 App. Div. 414, 96 N. Y. S. 428, affirmed (1908) 193 N. Y. 341, 86 N. E. 26.

Power to improve school property.— Where the board of education of a school district was authorized "to erect an addition" to the schoolhouse at a cost not to exceed a specified sum which was to be raised by taxation, it was not thereby given power to make contracts for an alteration to the existing building at a very considerable expense, and contractors dealing with it were bound at their peril to know the extent of its authority. Union Free School Dist. No. 4 v. Grear, (1908) 57 Misc. 472, 109 N. Y. S. 931.

Power to fill vacancies.— Where a vacancy exists in the office of trustee of a union free school district, the commissioner of education may order a special election for filling the vacancy; but if such special election is not ordered the board of education may fill such vacancy by appointment. Op. Atty.-Gen. (1911) 514. And the attorney-general has ruled that where a member of the board of education of a union free school district, whose term expired July 31, 1911, was re-elected for a full term, at the annual election in May, 1911, but soon afterward died, successive vacancies would thereby be occasioned, one for the term nearly completed and one at the beginning of the full term for which he was re-elected, each of which vacancies could be filled by special election, if so ordered, or by appointment by the board of education, in case no special election was held. If the vacancy be filled by election, it would be filled for the remainder of the term, and if by appointment, until the next annual election. Op. Atty.-Gen. (1911) 572.

Power to employ attorney.— The board of education of a school district may employ one of its members to act for it as attorney in defending a suit brought by a teacher to recover on a claim for services, and the one so employed may maintain an action against such board of education to recover the value of the services rendered in that capacity. Gould v. Board of Education, (1884) 34 Hun 16.

Duty to insure school property.— The members of a board of education are personally liable for loss sustained because of their failure to keep the school property properly insured. Op. Atty.-Gen. (1912) 218.

Actions against the board of education of city of New York.— Since the board of education of the city of New York has the power to employ the teachers for the schools within its jurisdiction, an action to recover the wages of a teacher employed by it is properly brought against such board of education and not against the city, where the sole object and purpose of the action is to establish the validity of a disputed claim and liquidate the amount thereof. Gunnison v. Board of Education, (1903) 176 N. Y. 11, 68 N. E. 106; Op. Atty.-Gen. (1912) 145.

The recovery of damages for injury to pupil.—An action will not lie "against the city of New York to recover damages for injuries occasioned to a pupil by the defective condition of the floor of a school." Brown v. New York, (1900) 32 Misc. 571, 66 N. Y. S. 382; Op. Atty.-Gen. (1912) 145.

Review by certiorari.—The action of the board of examiners of the board of education of the city of New York in refusing to certify, under section 1091 of the charter, that the experience of a teacher in schools other than high and training schools in said city is equivalent to a certain length of experience in the high and training schools is not judicial or quasi-judicial in its nature, when the decision is not founded upon testimony, nor the result of conflicting claims urged by adversaries, nor on a finding of fact based on conflicting evidence, and a common-law writ of certiorari does not lie to review such decision, and no statutory right thereto is conferred by the charter. People v. Maxwell, (1908) 123 App. Div. 591, 108 N. Y. S. 49. See also Walker v. Maxwell, (1902) 68 App. Div. 196, 74 N. Y. S. 94.

§ 311. Night schools; kindergartens. The board of education of each school district and of each city may maintain:

1. Night schools and determine the courses of instruction to be given therein. Such schools shall be free to all persons residing in the district or city.

2. Kindergartens which shall be free to resident children between the ages of four and six years.

Education Law of 1909, § 840, "Authority and regulations for free kindergartens," was not included in the Education Law of 1910.

Section 311 of the Education Law of 1909 was covered by section 391 of Education Law of 1910 (ch. 140). See note to schedule of sections to article 14, infra.

Establishment of evening schools.— The board of education of the city of New York has authority not only to establish evening schools, but also, in its discretion, to change the system of conducting them. Cusack v. Board of Education, (1903) 174 N. Y. 136, 66 N. E. 677, reversing 78 App. Div. 470, 79 N. Y. S. 803.

§ 312. Appointment of superintendent of schools. 1. In any union free school district having a population of five thousand or more, which fact shall be determined by the commissioner of education, as provided in section four hundred and ninety-two of this chapter, the board of education may appoint a superintendent of schools.

2. Such superintendent shall be under the direction of the board of education, which shall prescribe his powers and duties. He shall be paid a salary from the teachers' fund, to be fixed by the board of education, and he may be removed from office by a vote of the majority of all the members of such board. Whenever such superintendent shall be appointed, the said union free school district shall be entitled to the benefits of the provisions of section four hundred *and ninety-two of this chapter.

This section was derived from Education Law of 1909, § 230, and is the same in wording, with the exception of subdivision 1, which corresponds with the first sentence of section 230 of the Education Law of 1909.

This section came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 17.

Section 312 of the Education Law of 1909 was covered by section 392 of Education Law of 1910 (ch. 140). See note to schedule of sections to article 14, infra.

§ 313. Regular meetings; visitation of schools. 1. It shall be the duty of each board of education elected pursuant to the provisions of this article to have a regular meeting at least once in each quarter.

2. Each board shall appoint one or more committees, to visit every school or department under its supervision and such committee shall visit such schools at least twice in each quarter, and report at the next regular meeting of the board on the condition thereof.

3. The meetings of all such boards shall be open to the public, but said boards may hold executive sessions, at which sessions only the members of such boards or the persons invited shall be present.

This section was Education Law of 1909, § 231, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 22.

Section 313 of the Education Law of 1909 was covered by section 393 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

§ 314. Limitation upon expenditures. No board of education shall incur a district liability in excess of the amount appropriated by a district meeting unless such board is specially authorized by law to incur such liability.

This section was derived from Education Law of 1909, § 232, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 23.

* So in original.

Section 314 of the Education Law of 1909 was covered by section 394 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

§ 315. Deposit, custody and payment of moneys in cities and villages. 1. All moneys raised for the support of schools in any city or in any union free school district whose boundaries are coterminous with the boundaries of an incorporated village or apportioned to the same by the education department or otherwise, shall be paid into the treasury of such city or village to the credit of the board of education therein; and the funds so received into such treasury shall be kept separate and distinct from any other funds received into the said treasury. And the officer having the charge thereof shall give such additional security for the safe custody thereof as the corporate authorities of such city or village shall require.

2. No money shall be drawn from such funds, credited to the several boards of education, unless in pursuance of a resolution of said board, and on drafts drawn by the president and countersigned by the secretary or clerk, payable to the order of the persons entitled to receive such money, and stating on their face the purpose or service for which such moneys have been authorized to be paid by the said board of education.

This section was derived from Education Law of 1909, § 233.

Section 233 of Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 24.

Section 315 of the Education Law of 1909 was covered by section 395 of Education Law of 1910 (ch. 140). See note to schedule of sections of article 14, infra.

§ 316. Moneys and accounts in union free school districts whose boundaries are not the same as the boundaries of incorporated cities and villages. 1. All moneys raised in a union free school district whose limits do not correspond with those of a city or an incorporated village, or apportioned thereto by the education department or otherwise, shall be paid to the treasurer of the district entitled to receive the same, and be applied to the uses of the district and the board shall annually render their accounts of all moneys received and expended by them for the use of said schools.

2. No money shall be drawn from such funds in possession of such treasurer, unless in pursuance of a resolution of said board,

and on drafts drawn by the president and countersigned by the clerk payable to the order of the persons entitled to *reecive such money, and stating on their face the purpose or service for which said moneys have been authorized to be paid by the said board of education.

This section was derived from Education Law of 1909, § 234. It came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 25.

Effect of irregularity in manner of payment.—A payment actually made by the treasurer upon a just debt will not be declared invalid, at the instance of a person claiming a lien on the fund, simply because of the fact that it was not made in the manner prescribed. Goodrich v. Board of Education, (1910) 137 App. Div. 499, 122 N. Y. S. 50.

§ 317. Boards of education have powers of trustees of common schools and trustees of academies. The board of education shall possess all the powers and privileges, and be subject to all the duties in respect to the common schools, or the common school departments in any union free school in said districts, which the trustees of common schools possess or are subject to under this chapter, not specially provided for in this article, and not inconsistent with the provisions of this article; and to enjoy, whenever an academic department shall be by them established, all the immunities and privileges now enjoyed by the trustees of academies in this state.

This section was Education Law of 1909, § 235, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 16.

§ 318. Academy may be adopted as academic department. Whenever a union free school shall be established under the provisions of article five, and there shall exist within its district an academy, the board of education, when authorized by a vote of the voters of the district, may adopt such academy as the academic department of the district, with the consent of the trustees of the academy, and thereupon the trustees by a resolution to be attested by the signatures of the officers of the board and filed in the office of the clerk of the county, shall declare their offices vacant, and thereafter the said academy shall be the academic department of such union free school. The board of education when thereto authorized by a vote of the qualified voters of the district may

* So in original.

lease said academy and site, and maintain the academic department of such union free school therein and thereon.

This section was, substantially, Education Law of 1909, § 236. The reference to article 5 in the present law was to article 2 in the section of the Education Law of 1909, the change being made to correspond to a renumbering of the articles in the present law.

Section 236 of the Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 27.

§ 319. Contracts with academies. The board of education of a union free school district, with the approval of the commissioner of education, may adopt an academy as the academic department thereof, and contract for the instruction therein of pupils of academic grade, residing in the district. The academy thereupon becomes the academic department of such union free school, and the district is entitled to the same rights and privileges, is subject to the same duties, and the apportionment and distribution of state school money shall be made to it, as if an academic department had been established in such school.

This section was, substantially, Education Law of 1909, § 237. The present law eliminated the words, "and the regents of the university," which, in the Education Law of 1909, followed the words, "the commissioner of education" in the third line of the section.

Section 237 of the Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 16.

§ 320. Retransfer of academy to its former trustees. If there shall be, in a dissolved union free school district, an academy which shall have been adopted as the academic department of the union free school, under the provisions of title nine, chapter five hundred and fifty-five of the laws of eighteen hundred and sixty-four, and any amendment thereof, or title eight of chapter five hundred and fifty-six of the laws of eighteen hundred and ninety-four, and any amendment thereof, or under this chapter, it shall, upon the application of a majority of the surviving resident former trustees or stockholders, be transferred by the board of education to said former trustees or stockholders.

This section was Education Law of 1909, § 238, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 35.

§ 321. Records; reports. It shall be the duty of said board to keep an accurate record of all its proceedings in books provided for that purpose. It shall be the duty of said board to cause to be published once in each year, and twenty days next before the

annual meeting of the district, in at least one public newspaper, printed in such district, a full and detailed account of all moneys received by the board or the treasurer of said district, for its account and use, and of all the moneys expended therefor, giving the items of expenditure in full; should there be no paper published in said district said board shall publish such account by notice to the taxpayers, by posting copies thereof in five public places in said district.

Amended to read as above by L. 1910, ch. 442.

The amendment substituted the word "or" for "of" in the clause "all moneys received by the board or the treasurer" and the word "moneys" for "money" in the clause "and of all the moneys expended therefor," in the second sentence of the section.

This section was derived from Education Law of 1909, § 241, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 18.

§ 322. Reports to commissioner of education. 1. The board of education of each district and of each city shall make such detailed report and in such form upon any matter relating to the schools under their management and control as the commissioner of education shall from time to time require.

2. Such board of education shall also make an annual report giving the information relating to their schools required of trustees under section two hundred and seventy-six of this chapter. Such report shall also contain such information as the commissioner of education shall require and shall be in the form prescribed by him. Such report shall be made on the first day of August of each year and, in the case of a board of education of a union free school district, shall be delivered to the town clerk of the town in which the school-house of such district is located.

§ 323. Estimated expenses for ensuing year. It shall be the duty of the board of education of each district to present at the annual meeting a detailed statement in writing of the amount of money which will be required for the ensuing year for school purposes, exclusive of the public moneys, specifying the several purposes and the amount for each. This section shall not be construed to prevent the board from presenting such statement at a special meeting called for the purpose, nor from presenting a supplementary and amended statement or estimate at any time.

This section is, substantially, Education Law of 1909, § 342, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 18 pt.

§ 324. Vote upon school taxes. After the presentation of such statement or estimate, the question shall be taken upon voting the necessary taxes to meet the estimated expenditures, and when demanded by any voter present, the question shall be taken upon each item separately, and the inhabitants may increase the amount of any estimated expenditures or reduce the same, except for teachers' wages, and the ordinary contingent expenses of the schools.

This section was Education Law of 1909, § 243, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 19.

§ 325. Levy of tax for certain purposes without vote. If the inhabitants shall neglect or refuse to vote the sum estimated necessary for teachers' wages, after applying thereto the public school moneys, and other moneys received or to be received for that purpose, or if they shall neglect or refuse to vote the sum estimated necessary for ordinary contingent expenses, the board of education may levy a tax for the same, in like manner as if the same had been voted by the inhabitants.

This section was Education Law of 1909, § 244, which came from Consolidated School Law, L 1894, ch. 556, tit. 8, § 20.

§ 326. Reference to commissioner of education. If any question shall arise as to what are ordinary contingent expenses the same may be referred to the commissioner of education, by a statement in writing, signed by one or more of each of the opposing parties upon the question, and the decision of the commissioner shall be conclusive.

This section was Education Law of 1909, § 245, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 21.

§ 327. Corporate authorities must raise tax certified by board of education. 1. The corporate authorities of any incorporated village or city in which any such union free school shall be established, shall have power, and it shall be their duty, to raise, from time to time, by tax, to be levied upon all the real and personal property in said city or village, as by law provided for the defraying of the expenses of its municipal government, such sum as the board of education established therein shall declare necessary for teachers' salaries and the ordinary contingent expenses of supporting the schools of said district.

2. The sums so declared necessary shall be set forth in a detailed statement in writing, addressed to the corporate authorities by the board of education, giving the various purposes of anticipated expenditure, and the amount necessary for each; and the said corporate authorities shall have no power to withhold the sums so declared to be necessary; and such corporate authorities as aforesaid shall have power, and it shall be their duty to raise, from time to time, by tax as aforesaid, any such further sum to be set forth in a detailed statement in writing, addressed to the corporate authorities by the board of education, giving the various purposes of the proposed expenditure, and the amount necessary for each which may have been or which may hereafter be authorized by a majority of the voters of such union free school district present and voting at any special district meeting duly convened for any of the purposes stated in section four hundred and sixty-seven of this chapter.

This section was Education Law of 1909, § 247, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 9 pt.

§ 328. Application of this article. The provisions of this article shall apply to all union free schools heretofore organized pursuant to the provisions of chapter four hundred and thirty-three of the laws of eighteen hundred and fifty-three, and the amendments thereof, chapter five hundred and fifty-five of the laws of eighteen hundred and sixty-four, and the amendments thereof, and of chapter five hundred and fifty-six of the laws of eighteen hundred and ninety-four and the amendments thereof; and sections three hundred and twenty-seven, four hundred and sixty, four hundred and sixty-seven and four hundred and eighty of this chapter are made applicable to all school districts established by and organized under special statutes, except those of cities; and sections three hundred and ten, subdivision nineteen, three hundred and twelve and four hundred and fifty-eight of this chapter are made applicable to all school districts having a population of five thousand and upwards established by and organized under special statutes.

This section came from Education Law of 1909, § 248, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 42 pt., as amended by L. 1904, ch. 427, § 1.

The report of the Board of Statutory Consolidation (1907) at page 1158 refers to certain changes made by the board as follows: "Part omitted is unnecessary. 'The repeal . . . of any provision of a statute, which repeals any provision of a prior statute, does not revive such prior provision,' Statutory Construction Law, § 31."

Section 330 of the Education Law of 1909 is now covered by sections 90–93 of the Education Law of 1910.

Section 331 of the Education Law of 1909 is now covered by section 94 of the Education Law of 1910.

Section 332 of the Education Law of 1909 is now covered by section 25 of the Education Law of 1910.

Sections 333 and 334 of the Education Law of 1909 were not included in the Education Law of 1910, and were repealed by construction.

ARTICLE 12*

Town Clerks

Section 340. Duties of town clerks.
341. Expenses of town clerks.

§ 340. Duties of town clerks. It shall be the duty of the town clerk of each town:

1. To keep all books, maps, papers, and records of his office touching common schools, and forthwith to report to the school commissioner any loss or injury to the same.

2. To receive from the supervisors the certificates of apportionment of school moneys to the town, and to record them in a book to be kept for that purpose.

3. To notify forthwith the trustees of the several school districts of the filing of each such certificate.

4. To see that the trustees of the school districts make and deposit with him their annual reports within the time prescribed by law, and to deliver them to the school commissioner on demand.

5. To furnish the school commissioner of the school commissioner district in which his town is situated the names and post-office addresses of the school district officers reported to him by the district clerks.

6. To distribute to the trustees of the school districts all books, blanks and circulars which shall be delivered or forwarded to him by the commissioner of education or school commissioner for that purpose.

7. To receive from the supervisor, and record in a book kept for that purpose, the annual account of the receipts and disbursements of school moneys required to be submitted to the town auditors, together with the action of the town auditors thereon, and to send a copy of the account and of the action thereon, by mail, to the commissioner of education whenever required by him, and to file and preserve the vouchers accompanying the account.

8. To receive and to record, in the same book, the supervisor's final account of the school moneys received and disbursed by him, and deliver a copy thereof to such supervisor's successor in office.

* This article was Education Law of 1909, article 10. Article 12 of the Education Law of 1909 was "School Commissioners."

9. To receive from the outgoing supervisor, and file and record in the same book, the county treasurer's certificate, that his successor's bond has been given and approved.

10. To receive, file and record the descriptions of the school districts, and all papers and proceedings delivered to him by the school commissioner pursuant to the provisions of this chapter.

11. To act, when thereto legally required, in the erection or alteration of a school district, as in article five of this chapter provided.

12. To receive and preserve the books, papers and records of any dissolved school district, which shall be ordered, as hereinafter provided, to be deposited in his office.

13. To perform any other duty which may be devolved upon him by this chapter, or by any other act touching common schools.

This section was, substantially, Education Law of 1909, § 260. The present Education Law divided subdivision 4 of the Education Law of 1909 into subdivisions 4 and 5.

Section 260 of the Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 4, § 1.

Section 340 of the Education Law of 1909 is now covered by section 94, subd. 10.

General duties of town clerk: see TOWN LAW, § 92.

§ 341. Expenses of town clerks. The necessary expenses and disbursements of the town clerk in the performance of his said duties, are a town charge, and shall be audited and paid as such.

This section was Education Law of 1909, § 261, which came from Consolidated School Law, L. 1894, ch. 556, tit. 4, § 2.

Section 341 of the Education Law of 1909 is now covered by sections 97, 98.

ARTICLE 13*

SUPERVISORS

Section 360. Duties of supervisors.
361. Sale of gospel or school lots on division of town.
362. Payment of proceeds of sale of gospel or school lots.
363. Supervisor's bond for school moneys.
364. Refusal of supervisor to give bond.
365. Report by supervisors to district superintendents.

§ 360. Duties of supervisors. It is the duty of every supervisor:

1. To disburse the school moneys in his hands applicable to the payment of teachers' wages, upon and only upon the written orders of a sole trustee or a majority of the trustees, in favor of qualified teachers. But whenever the collector in any school district shall have given bonds for the due and faithful performance of the duties of his office as disbursing agent, as required by section two hundred and fifty-three or whenever any school district shall elect a treasurer as provided in this chapter, the said supervisor shall, upon the receipt by him of a copy of the bond executed by said collector or treasurer as herein required, certified by the trustees, pay over to such collector or treasurer, all moneys in his hands applicable to the payment of teachers' wages in such district, and the said collector or treasurer shall disburse such moneys so received by him upon such orders as are specified herein to the teachers entitled to the same.

2. To pay over all the school money apportioned to a union free school district, to the treasurer of such district, upon the order of its board of education.

3. To keep a just and true account of all the school moneys received and disbursed by him during each year, and to lay the same, with proper vouchers, before the town board or board of town auditors at each annual meeting thereof.

4. To provide a bound blank book, the cost of which shall be a town charge, and to enter therein all his receipts and disbursements of school moneys, specifying from whom and for what purposes they were received, and to whom and for what purposes

* This article was Education Law of 1909, article 11. Article 13 of the Education Law of 1909 was, "Commissioner of Education."

they were paid out; and to deliver the book to his successor in office.

5. To make out a just and true account of all school moneys received by him and of all disbursements thereof, within fifteen days after the termination of his office and to deliver the same to the town clerk, to be filed and recorded, and to notify his successor in office that such account has been made and filed.

6. To deliver to his predecessor the county treasurer's certificate showing that he has given to such treasurer the bond required by section three hundred and sixty-three of this chapter and that such bond has been approved by such treasurer, and to procure from the town clerk a copy of his predecessor's account, and to demand and receive from him all school moneys remaining in his hands.

7. To pay to his successor upon receipt of such certificate all school moneys remaining in his hands, and to forthwith file the certificate in the town clerk's office.

8. To sue for and recover, in his name of office, when the duty is not elsewhere imposed by law, all penalties and forfeitures imposed by this chapter, and for any default or omission of any town officer or school district board or officer under this chapter; and after deducting his costs and expenses to report the balances to the school commissioner.

9. To act, when legally required, in the erection or alteration of a school district, as provided in article five of this chapter, and to perform any other duty which may be devolved upon him by this chapter, or any other act relating to common schools.

10. To take and hold possession of the gospel and school lots of their respective towns.

11, To lease the same for such time not exceeding twenty-one years, and upon such conditions as they shall deem expedient.

12. To sell the same with the advice and consent of the inhabitants of the town, in town-meeting assembled, for such price and upon such terms of credit as shall appear to them most advantageous.

13. To invest the proceeds of such sales in loans, secured by bond and mortgage upon unincumbered real property of the value of double the amount loaned.

14. To purchase the property so mortgaged upon a foreclosure, and to hold and convey the property so purchased whenever it shall become necessary.

15. To re-loan the amount of such loans repaid to them, upon the like security.

16. To apply the rents and profits of such lots, and the interest of the money arising from the sale thereof, to the support of schools, as may be provided by law, in such manner as shall be thus provided.

17. To render a just and true account of the proceeds of the sales and the interest on the loans thereof, and of the rents and profits of such gospel and school lots, and of the expenditure and appropriation thereof, on the last Tuesday next preceding the annual town-meeting in each year, to the town board.

18. To deliver over to his successor in office, all *boxes, papers and securities relating to the same, at the expiration of their respective offices.

19. To take therefor a receipt, which shall be filed in the clerk's office of the town; and,

20. To commence and prosecute in and by the name and style of the supervisor of the town any suits against any of his predecessors in office or against any other person to recover any debt, dues or demands, in anywise arising from such public lot; and no such suit shall abate by the death, resignation or removal from office of the said supervisor but the same shall and may be prosecuted to judgment and execution by his successor in office.

This section was, substantially, Education Law of 1909, § 280. It came from L. 1819, ch. 239, § 1; R. S. pt. 1, ch. 15, tit. 4, § 3, and from Consolidated School Law, L. 1894, ch. 556, tit. 3, § 4, as amended by L. 1896, ch. 177, § 1.

The report of the Board of Statutory Consolidation (1907), at page 1158, refers to certain changes made by the board as follows: "New matter 'supervisors' substituted for trustees for the reason that the powers and duties of trustees of gospel and school lots were transferred to the town superintendent of common schools by L. 1846, 186, and by Consolidated School Law, tit. 3, § 1, transferred to the supervisors."

Section 360 of the Education Law of 1909 is now covered by section 880.

General powers of board of supervisors: see COUNTY LAW, § 12.

Mandamus to compel payment of school moneys by supervisor.—A mandamus will not lie to compel the supervisor of a town to pay over public moneys to a school district, where such supervisor has been enjoined by the commissioner of education from making such payment. People v. Allen, (1897) 19 Misc. 464, 44 N. Y. S. 566.

§ 361. Sale of gospel or school lots on division of town. Whenever a town having lands assigned to it for the support of the gospel or of schools, shall be divided into two or more towns,

* So in original.

or shall be altered in its limits by the annexing of a part of its territory to other towns, such lands shall be sold by the supervisor of the town, in which such lands were included immediately before such division or alteration; and the proceeds thereof shall be apportioned between the towns interested therein, in the same manner as the other public moneys of towns, so divided or altered, are apportioned.

This section was Education Law of 1909, § 281, which came from R. S. pt. 1, ch. 15, tit. 4, § 5.

The report of the Board of Statutory Consolidation (1907) at page 1158, in relation to certain changes made in the above section, refers to the note of the board which follows section 360.

Section 361 of the Education Law of 1909 is now covered by section 881.

§ 362. Payment of proceeds of sale of gospel or school lots. The shares of such moneys, to which the towns shall be respectively entitled, shall be paid to the supervisors of the respective towns, and shall thereafter be subject to the provisions of this article.

This section was Education Law of 1909, § 282, which came from R. S. pt. 1, ch. 15, tit. 4, § 6. The report of the Board of Statutory Consolidation (1907) at page 1158, in relation to certain changes made in the above section, refers to the note of the board which follows section 360.

Section 362 of the Education Law of 1909 is now covered by section 882.

§ 363. Supervisor's bond for school moneys. 1. Immediately on receiving the school commissioners' certificates of apportionment, the county treasurer shall require of each supervisor, and each supervisor shall give to the treasurer, in behalf of the town, his bond, with two or more sufficient sureties, approved by the treasurer, in the penalty of at least double the amount of the school moneys set apart or apportioned to the town, and of any such moneys unaccounted for by his predecessors, conditioned for the faithful disbursement, safe-keeping and accounting for such moneys, and of all other school moneys that may come into his hands from any other source.

2. If the condition shall be broken the county treasurer shall sue the bond in his own name, in behalf of the town, and the money recovered shall be paid over to the successor of the supervisor in default, such successor having first *giving security as aforesaid.

3. Whenever the office of a supervisor shall become vacant, the

* So in original.

county treasurer shall require the person elected or appointed to fill such vacancy to execute a bond, with two or more sureties, to be approved by the treasurer, in the penalty of at least double the sum of the school moneys remaining in the hands of the old supervisor, when the office became vacant, conditioned for the faithful disbursement and safe-keeping of and accounting for such moneys. But the execution of this bond shall not relieve the supervisor from the duty of executing the bond first above mentioned.

This section was Education Law of 1909, § 283, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 17.

Official undertakings: see PUBLIC OFFICERS LAW, § 11.

What are school moneys.— Mortgage tax moneys which come into the hands of the supervisor for distribution to the towns, cities and villages within his jurisdiction are not school moneys within the meaning of this section. Whitestown v. Title Guaranty, etc., Co., (1911) 72 Misc. 498, 131 N. Y. S. 390, affirmed 148 App. Div. 900, affirmed (1913) 209 N. Y. 512 mem.

Supervisor as an insurer.—A supervisor who deposits public moneys in a bank which fails is liable for the amount lost thereby, even though he acts in the utmost good faith and without any negligence whatsoever, his responsibility being that of an insurer. Tillinghast v. Merrill, (1896) 151 N. Y. 135, 45 N. E. 375, 56 A. S. R. 612, 34 L. R. A. 678, affirming 77 Hun 481, 38 N. Y. S. 1089.

Action on supervisor's bond.— It seems that an action on a supervisor's bond given pursuant to this section must be brought by the county treasurer. Palmer v. Roods, (1906) 116 App. Div. 66, 101 N. Y. S. 186.

§ 364. Refusal of supervisor to give bond. The refusal of a supervisor to give such security shall be a misdemeanor, and any fine imposed on his conviction thereof shall be for the benefit of the common schools of the town. Upon such refusal, the moneys so set apart and apportioned to the town shall be paid to and disbursed by some other officer or person to be designated by the county judge, under such regulations and with such safeguards as he may prescribe, and the reasonable compensation of such officer or person, to be adjusted by the board of supervisors, shall be a town charge.

This section was Education Law of 1909, § 284, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 18.

§ 365. Report by supervisors to district superintendents. On the first Tuesday of February in each year, each supervisor shall make a return in writing to the district superintendent of schools of the supervisory district in which the town is situated, showing the amounts of school moneys in his hands not paid on the orders of trustees for teachers' salaries, and the districts to which they

stand accredited, and if such moneys remain in his hands, he shall report that fact; and thereafter he shall not pay out any of said moneys until he shall have received the certificate of the next apportionment; and the moneys so returned by him shall be reapportioned as directed in article eighteen of this chapter.

Amended to read as above by L. 1913, ch. 130. This section came from Consolidated School Law, L. 1894, ch. 556, tit. 3, § 3.

ARTICLE 14

District Superintendent of Schools; His Election, Powers and Duties

Section 380. Office of district superintendent of schools created.
381. Supervisory districts.
382. School directors.
383. Election of district superintendent.
384. Qualifications of district superintendents.
385. District superintendent must take oath of office.
386. Term of office of district superintendent.
387. Vacancies in the office of district superintendent.
388. Filling vacancy in the office of district superintendent.
389. Salary of district superintendent.
390. Expense of district superintendents.
391. Salary of district superintendent may be withheld.
392. Removal of district superintendent from office.
393. District superintendent not to be interested in certain business or to accept rewards, et cetera.
394. District superintendents not to engage in other business.
395. General powers and duties of district superintendent.
396. District superintendent subject to the rules of commissioner of education.
397. Other duties of a district superintendent.
398. Appeals from acts of district superintendent, et cetera.

§ 380. Office of district superintendent of schools created The office of district superintendent of schools is hereby created to begin on the first day of January, nineteen hundred and twelve.

New. Laws 1910, ch. 607. Section 384 of the Education Law of 1910 (ch. 140), related to "Office of School Commissioner continued," and was Educa-

Article 14 of the Education Law of 1909 related to "Appeals or Petitions to Commissioner of Education," and contained sections numbered 360–362. The subject-matter of these sections is now covered by sections 880–882.

Article 12 of the Education Law of 1909 related to "School Commissioners." The subject-matter of this article was covered by article 14 of the Education Law of 1910 (L. 1910, ch. 140). This article was amended, "to read as follows," by L. 1910, ch. 607. By this amendment the office of school commissioner was abolished and the office of district superintendent of schools was created.

tion Law of 1909, § 300, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 1.

Section 380 of the Education Law of 1909 is now covered by section 410.

§ 381. Supervisory districts. 1. The territory embraced in the school commissioner districts of the state outside of cities and of school districts of five thousand population or more, which employ a superintendent of schools, shall be organized and divided into supervisory districts. In the formation or division of such territory into such districts no town shall be divided. The territory of such districts must be contiguous and compact and towns shall be arranged in districts so that there shall be as equal a division of the territory and number of school districts as may be practicable.

2. In a county entitled to two or more supervisory districts the school commissioner of each school commissioner district in such county and the supervisor of each town in such county shall meet at the county seat of such county on the third Tuesday in April, nineteen hundred and eleven, at ten o'clock in the forenoon and divide such county into the number of supervisory districts to which it is entitled.

3. The county clerk of such county shall give ten days' notice, in writing, of such meeting, to each of such school commissioners and supervisors. The county clerk shall also call such meeting to order at the proper hour and the school commissioners and supervisors present shall elect from their number a chairman and a clerk.

4. A copy of the proceedings of such meeting showing the supervisory districts formed and naming the towns composing each of such districts, certified by the chairman and clerk, shall be deposited by the clerk of such meeting in the office of the clerk of the county immediately after the close of the meeting. The county clerk on receipt of the same shall forward a certified copy thereof to the commissioner of education.

5. The number of supervisory districts into which each county shall be organized or divided is as follows:

a. Hamilton, Putnam, Rockland, Schenectady, each one;

b. Chemung, Fulton, Genesee, Montgomery, Nassau, Schuyler, Seneca, Yates, each two;

c. Albany, Clinton, Columbia, Cortland, Essex, Greene, Livingston, Niagara, Orange, Orleans, Rensselaer, Schoharie, Suffolk, Sullivan, Tioga, Tompkins, Warren, Wyoming, each three;

d. Broome, Dutchess, Franklin, Herkimer, Lewis, Madison, Monroe, Ontario, Saratoga, Ulster, Washington, Wayne, Westchester, each four;

e. Allegany, Cattaraugus, Cayuga, Chenango, Erie, Onondaga, Oswego, each five;

f. Chautauqua, Delaware, Jefferson, Otsego, each six;

g. Oneida, Steuben, each seven;

h. Saint Lawrence, eight districts.

6. The district superintendents of two or more supervisory districts in a county may unite in a petition to the board of supervisors of the county for a change in the boundaries of such districts by including or excluding one or more towns, stating the reasons for such change, and if such change conforms to the territorial requirements of subdivision one of this section, the board of supervisors may, by resolution, change such districts in accordance with such petition. A copy of such resolution, certified by the chairman and clerk of the board of supervisors, shall be deposited by the clerk in the office of the clerk of the county. The county clerk on receipt of the same shall forward a certified copy thereof to the commissioner of education.

New. Laws 1910, ch. 607. Section 381 of the Education Law of 1910 (ch. 140) related to "School Commissioners districts," and was Education Law of 1909, § 301, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 2.

Subdivision 6 was added by L. 1916, ch. 238.

Section 381 of the Education Law of 1909 is now covered by section 411.

The county clerk is not entitled to an audit by the board of supervisors of a charge for notifying school directors and school commissioners of meetings held pursuant to the provisions of the Education Law. People v. Howard, (1912) 152 App. Div. 621, 137 N. Y. S. 496.

§ 382. School directors. 1. Two school directors shall be elected for each town at the general election held in the year nineteen hundred and ten. One of such directors shall be elected to serve until January one, nineteen hundred and thirteen, and the other shall be elected to serve until January one, nineteen hundred and sixteen. A director shall be elected at the general election in nineteen hundred and twelve and every fifth year thereafter and one shall be elected in nineteen hundred and fifteen and every fifth year thereafter. The term of office of the directors elected in nineteen hundred and twelve and thereafter shall commence on the first day of January following their election and continue for

five years. In towns, except those towns situated in the counties of Nassau and Suffolk, where biennial town meetings are held at a time other than the general election, directors shall be elected at the biennial town meeting held immediately prior to the expiration of the term of their predecessors. Such directors shall be elected in the same manner that town officers are elected at town meetings held at the time of a general election, and the provisions of the election law relating to the nomination and election of such town officers shall apply to the nomination and election of such directors.

2. A school director shall vacate his office by removal from the town or by filing a written resignation with the town clerk. A vacancy in the office of school director shall be filled by the town board of the town in which such vacancy exists, for the remainder of the unexpired term. If the town fails to elect a director a vacancy shall be deemed to exist in such office.

3. A school director before entering upon the discharge of the duties of his office, and not later than thirty days after the date on which he was elected to office, shall take the oath of office prescribed by the constitution. Such oath may be taken before a justice of the peace or a notary public, and must be filed in the office of the clerk of the town.

4. A school director shall receive two dollars per day for each day's service and his necessary traveling expenses, and the town board of the town for which such director is chosen shall audit and allow the same.

New. Laws 1910, ch. 607, as amended by L. 1916, ch. 168.

Section 382 of the Education Law of 1910 (ch. 140) related to "Election and Qualifications of School Commissioners," and was Education Law of of 1909, § 302, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 3.

Section 382 of the Education Law of 1909 is now covered by section 412.

Eligibility of women.—A school director is a town office and consequently a woman is not eligible thereto. Op. Atty.-Gen. (1911) 199.

Election of directors — ballots.—"When school directors of a town are to be elected in an odd numbered year, their names should be printed on the same ballots as the names of candidates for other offices voted for in such town at the general election of that year. When they are to be elected in an even numbered year in towns holding their town meetings at the time of the general election, their names are to be printed with other town officers to be voted for upon a separate ballot, and in towns holding their town meetings at any other time than at the time of the general election, their names are to be printed upon a separate ballot; such ballots to be provided by the town clerk as provided" in section 341 of the Election Law. Op. Atty.-Gen. (1910) 415.

Allowance of traveling expenses.—A school director, who is attending Cornell University at Ithaca, is not entitled to traveling expenses incurred in

going from Ithaca to the town where he was elected for the purpose of performing his duties. Op. Atty.-Gen. (1911) 522.

Vacancy in office.— Where there has been a failure to elect a school director as provided by law, or where a vacancy exists for other reasons, the town board cannot appoint for the remainder of the five-year term, but must fill the vacancy in accordance with the provisions of section 130 of the Town Law. A director should then be elected to serve the remainder of the unexpired term by the voters at the next biennial town meeting following. Op. Atty.-Gen. (1915) 462, 6 St. Dep. Rep. 425.

§ 383. *1. **Election of district superintendent.** The school directors of the several towns composing a supervisory district shall meet for organization at eleven o'clock in the forenoon on the third Tuesday in May following their election. Such meeting shall be held at a place in the supervisory district, designated by the county clerk, at least ten days previous to the date thereof. At the time the county clerk designates such place of meeting he shall also mail a notice of the time and place of such meeting to each school director of the district. The school directors present at such meeting shall organize by electing from their number a chairman, a clerk and two inspectors of election. The school directors at such meeting shall designate a place for holding future meetings.

2. The school directors of the several towns composing a *supervising district shall be a board of school directors, and such board of directors shall meet at eleven o'clock in the forenoon on the third Tuesday in August, nineteen hundred and eleven, and on the third Tuesday in June every fifth year thereafter, and elect a district superintendent of schools. The clerk of such board shall give each director at least ten days' notice in writing of the hour, date and place of such meeting.

3. If such directors fail to elect a district superintendent of schools before the first day of January following the date of such meeting, and a vacancy exists in such office, the county judge shall appoint such superintendent who shall serve until the board of directors shall fill such vacancy.

4. In the election of such district superintendent the vote shall be by ballot and the person receiving a majority of all votes cast shall be elected. Each school director shall be entitled to one vote in such election.

5. The clerk of such board shall file a copy of the proceedings

* So in original.

of each meeting and each election, certified by himself and the chairman, in the office of the clerk of the county in which such meeting or election is held within three days after the close thereof.

6. The county clerk on receipt of notice of the election of a district superintendent of schools in any supervisory district of his county shall deliver to the person elected a certificate of such election attested by his signature with the seal of the county and shall also transmit to the commissioner of education a duplicate of such certificate of election.

New. Laws 1910, ch. 607. Section 383 of the Education Law of 1910 (ch. 140) related to "Term and oath of office," and was Education Law of 1909, § 303, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 4. Section 383 of the Education Law of 1909 is now covered by section 413.

§ 384. Qualifications of district superintendents. 1. To be eligible to election to the office of district superintendent of schools a person must be at least twenty-one years of age, a citizen of the United States and a resident of the state, but he need not be a resident of the supervisory district for which he is elected at the time of his election. Such superintendent must, however, become a resident of the county containing the district for which he has been elected on or before the date on which his term of office begins. Failure to acquire such residence will be deemed a removal from the county. No person shall be ineligible on account of sex.

2. In addition thereto he must possess or be entitled to receive a certificate authorizing him to teach in any of the public schools of the state without further examination and he shall also pass an examination prescribed by the commissioner of education on the supervision of courses of study in agriculture and teaching the same.

3. A district superintendent who is removed from office shall not be eligible to election to such office in any supervisory district for a period of five years.

New. Laws 1910, ch. 607. Section 384 of the Education Law of 1910 (ch. 140), related to "Vacating Office," and was Education Law of 1909, § 304, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 5.

Section 384 of the Education Law of 1909 is now covered by section 414.

Constitutionality of subdivision 2.— The provisions of subdivision 2 of this section are remedial in their nature to the end that fit, proper and reasonably well qualified persons should be district superintendents of schools. They do

not impose any arbitrary or unreasonable qualifications, and do not in any way violate either section 1 of article 1 of the state constitution, forbidding any citizen to be deprived of his rights or privileges, "unless by the law of the land, or the judgment of his peers;" or section 2 of article X of the state constitution, providing that officers shall be elected by the people or appointed; or section 1 of article XIII of the state constitution, prescribing an official oath, and providing that "no other oath, declaration or test shall be required as a qualification for any office of public trust;" or the provisions of the Fourteenth Amendment of the Federal Constitution relating to the privileges and immunities of citizens and the equal protection of the laws. People v. Transue, (1911) 74 Misc. 504, 132 N. Y. S. 497.

Status of district superintendent under Civil Service Law.— The position of district superintendent of schools is within the provisions of section 9 of the Civil Service Law, and is therefore in the unclassified civil service. Op. Atty.-Gen. (1911) 5.

Eligibility under the former Consolidated School Law.— The attorney-general ruled that a resident of a city which, under the Consolidated School Law of 1894, could not form a part of a school commissioner's district, was ineligible to the office of school commissioner for the district in which such city was located. Op. Atty.-Gen. (1896) 201.

§ 385. District superintendent must take oath of office. A district superintendent of schools before entering upon the discharge of the duties of his office, and not later than five days after the date on which his term of office is to commence, shall take the oath of office prescribed by the constitution. Such oath may be taken before a county clerk, a justice of the peace, or a notary public and must be filed in the office of the clerk of the county.

New. Laws 1910, ch. 607. Section 385 of the Education Law of 1910 (ch. 140) related to "Filling vacancy in office," and was Education Law of 1909, § 305, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 6.

Section 385 of the Education Law of 1909 is now covered by section 415.

Official oaths: see PUBLIC OFFICERS LAW, § 10.

§ 386. Term of office of district superintendent. The district superintendents elected in nineteen hundred and eleven shall hold office until the first day of August, nineteen hundred and sixteen. The full term of office of a district superintendent of schools elected in nineteen hundred and sixteen and thereafter shall be five years and shall commence on the first day of August next after his election. A district superintendent of schools unless removed shall hold office until his successor is chosen and qualified.

New. Laws 1910, ch. 607. Section 386 of the Education Law of 1910 (ch. 140) related to "Salary," and was Education Law of 1909, § 306, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 7.

Section 386 of the Education Law of 1909 is now covered by section 440.

§ 387. Vacancies in the office of district superintendent. The office of district superintendent of schools shall be vacant upon:

1. The death of an incumbent.

2. His removal from office by the commissioner of education.

3. His removal from the county.

4. His filing in the office of the clerk of the county his written resignation.

5. His acceptance of the office of supervisor, town clerk or trustee of a school district.

6. His failure to take and file the oath of office as provided in this article.

New. Laws 1910, ch. 607. Section 387 of the Education Law of 1910 (ch. 140) related to "Increase of salary," and was Education Law of 1909, § 307, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 8.

Sections 387 and 387-a of the Education Law of 1909 are now covered by section 440.

Creation of vacancies: see PUBLIC OFFICERS LAW, § 30.

§ 388. Filling vacancy in the office of district superintendent. Whenever a vacancy occurs it shall be filled for the remainder of the unexpired term by the board of school directors. Upon direction of the commissioner of education the clerk of the board in which the supervisory district having such vacancy is located shall immediately call a special meeting of such board for the purpose of electing a district superintendent. The provisions of this title relative to the election generally of a district superintendent of schools, including notices, filing of the proceedings and all other matters relating to such an election, shall apply to a special election to fill a vacancy in such office.

New. Laws 1910, ch. 607. Section 388 of the Education Law of 1910 (ch. 140) related to "Allowance for expenses," and was Education Law of 1909, § 308, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 9.

Section 388 of the Education Law of 1909 is now covered by section 416.

§ 389. Salary of district superintendent. 1. Each district superintendent shall receive an annual salary from the state of twelve hundred dollars, payable monthly by the commissioner of education from moneys appropriated therefor.

2. The supervisors of the towns composing any supervisory district may by adopting a resolution by a majority vote increase the salary to be paid by such district to its district superintendent. Such supervisors must thereupon file with the clerk of the board of supervisors a certificate showing the amount of such increase.

The board of supervisors of each county shall levy such amount annually by tax on the towns composing such supervisory district within the county.

New. Laws 1910, ch. 607. Section 389 of the Education Law of 1910 (ch. 140) related to "Forfeiture of salary for neglect," and was Education Law of 1909, § 309, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 10.

Section 389 of the Education Law of 1909 is now covered by section 417.

De facto officer's right to salary.—A de facto school officer whose right to that office has been judicially denied is not entitled to, and cannot receive salary for, services rendered in that capacity after judgment was rendered against him. Op. Atty.-Gen. (1894) 187.

Right to salary after dissolution of district.— Certain towns were annexed to the city of Brooklyn before the expiration of the term of office of a school commissioner of the district composed of those towns. The district having thus come under the jurisdiction of the school authorities of that city, it was held that he was not entitled to be paid his salary from the date of such annexation. Op. Atty.-Gen. (1896) 114.

Increase of salary by supervisors.— Where the term of office of the petitioner, duly appointed district superintendent of schools for a supervisory district, including five certain towns in Schenectady county, began Jan. 1, 1912, and would expire Aug. 1, 1916, and the supervisors of the said towns, pursuant to the provisions of this section, adopted and severally signed a resolution that in addition to his annual salary the petitioner be paid $400 by the county treasurer in the same manner as other county charges, which resolution was filed with the clerk of the board of supervisors and a duplicate thereof with the county treasurer, there was a substantial compliance with this section; and, upon the failure and refusal of the board of supervisors to take proper action, the petitioner was entitled to a peremptory writ of mandamus directing the said board to convene within a reasonable time and levy the $400 against the said towns. People v. Schenectady County, (1913) 79 Misc. 641, 141 N. Y. S. 257.

§ 390. Expense of district superintendents. The commissioner of education shall quarterly audit and allow the actual sworn expense incurred by each district superintendent of schools in the performance of his official duties, but the amount of such expense allowed shall not exceed in any year three hundred dollars. Such expenses shall be paid by the commissioner of education from moneys appropriated therefor.

New. Laws 1910, ch. 607. Section 390 of the Education Law of 1910 (ch. 140) related to "May act for school commissioner of adjoining district," and was Education Law of 1909, § 310, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 11.

Section 390 of the Education Law of 1909 is now covered by section 418.

§ 391. Salary of district superintendent may be withheld. The commissioner of education may, whenever he is satisfied that a district superintendent of schools has persistently neglected to perform an official duty, withhold payment of the whole or any

part of such superintendent's salary as it shall become due and he may also withhold any sum to which such superintendent shall be entitled for expenses and the amount thus withheld shall be forfeited; but said commissioner may in his discretion remit such forfeiture in whole or in part.

New. Laws 1910, ch. 607. Section 391 of the Education Law of 1910 (ch. 140) related to "Powers of school commissioners in districts organized under special acts," and was Education Law of 1909, § 311, which came from Consolidated School Law, L. 1894, ch. 556, tit. 6, § 14, as amended by L. 1897, ch. 512, § 3.

Section 391 of the Education Law of 1909 is now covered by section 419.

§ 392. Removal of district superintendent from office. The commissioner of education may, by an order under the seal of the education department, remove a district superintendent of schools from office whenever he is satisfied that such superintendent:

1. Has been guilty of immoral conduct;
2. Is incompetent to perform any official duty; or
3. Has persistently neglected or wilfully refused to perform any lawful duty imposed upon him.

New. Laws 1910, ch. 607. Section 392 of the Education Law of 1910 (ch. 140) related to "School commissioners may take affidavits and take and report testimony," and was Education Law of 1909, § 312, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 14.

Section 392 of the Education Law of 1909 is now covered by section 420.

Upon what the commissioner's determination may be based.— The determination of the state commissioner of education removing a district superintendent from office for a wilful disregard of his duties, etc., under the authority conferred by this section, will not be reversed because the state commissioner based his determination not only upon the evidence produced at the hearing but also upon records in his own office, consisting of letters sent and received, even though they were not called to the attention of the person removed upon the hearing. People v. Draper, (1911) 142 App. Div. 102, 127 N. Y. S. 14, affirmed (1911) 202 N. Y. 612, 96 N. E. 1128.

§ 393. District superintendent not to be interested in certain business or to accept rewards, et cetera. A district superintendent of schools shall not:

1. Be directly or indirectly interested otherwise than as author in the sale, publication, or manufacture of school books, maps, charts, or school apparatus or in the sale or manufacture of school furniture or any other school or library supplies.
2. Be directly or indirectly interested in any contract made by the trustees of a school district.

3. Be directly or indirectly interested in any agency or bureau maintained to obtain or aid in obtaining positions for teachers or superintendents.

4. Directly or indirectly receive any emolument, gift, pay, reward or promise of pay or reward for recommending or procuring the sale, use or adoption or aiding in procuring the sale, use or adoption of any book, map, chart, school apparatus or furniture or other supplies for any school or library or for recommending a teacher or aiding a teacher in obtaining an appointment to teach.

New. Laws 1910, ch. 607. Section 393 of the Education Law of 1910 (ch. 140) related to "Powers and duties," and was Education Law of 1909, § 313, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 13 pt.

Section 393 of the Education Law of 1909 is now covered by section 421.

School officer not to be interested in sales, leases or contracts: see PENAL LAW, § 1868.

§ 394. District superintendents not to engage in other business. A district superintendent of schools shall devote his whole time to the performance of the duties of his office and shall not engage in any other occupation or profession. Such time as shall not necessarily be devoted by a district superintendent of schools to the performance of the clerical and administrative work of his office shall be devoted to the visitation and inspection of the schools maintained in his supervisory district.

New. Laws 1910, ch. 607. Section 394 of the Education Law of 1910 (ch. 140) related to "Subjection to and reports to commissioner of education," and was Education Law of 1909, § 314, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 15.

Section 394 of the Education Law of 1909 is now covered by section 422.

§ 395. General powers and duties of district superintendent. A district superintendent of schools shall have power and it shall be his duty:

1. To inquire from time to time into and ascertain whether the boundaries of the school districts within his supervisory district are definitely and plainly described in the records of the office of the proper town clerk; and in case the record of the boundaries of any school district shall be found indefinite or defective, or if the same shall be in dispute, then to cause the same to be amended or an amended record of the boundaries to be made. All necessary expenses incurred in establishing such amended records shall

be a charge on the district or districts affected, to be audited and allowed by the trustees thereof, on the certificate of the district superintendent.

2. To assemble all the teachers of his district by towns or otherwise, for the purpose of conference on the course of study, for reports of and advice and counsel in relation to discipline, school management and other school work, and for promoting the general good of all the schools of the district. Teachers shall be entitled to compensation for days actually in attendance upon such conference.

3. To frequently and thoroughly inspect the work done in the training classes maintained in his district and to report to the commissioner of education on the efficiency of the instruction given and the observation and practice work done by the members thereof.

4. To hold meetings of trustees and other school officers and to advise with and counsel them in relation to their powers and duties and particularly in relation to the repair, construction, heating, ventilating and lighting of schoolhouses and improving and adorning the school grounds. To especially advise trustees relative to the employment of teachers, the adoption of textbooks and the purchase of library books, school apparatus, furniture and supplies.

5. To direct the trustees of any district to make any alterations or repairs to the schoolhouses or outbuildings which shall, in his opinion, be necessary for the health or comfort of the pupils, but the amount which trustees shall be directed to expend in such alterations or repairs shall not exceed two hundred dollars in any one year.

6. To direct the trustees of any district to make any repairs or alterations to school furniture, or where in his opinion any furniture is unfit for use and not worth repairing, or when sufficient furniture is not provided, to direct that such new furniture shall be provided as he deems necessary, but the amount thus directed to be expended shall not exceed in any one year one hundred dollars.

7. To direct the trustees of any district to abate any nuisance in or on the school grounds.

8. To condemn a schoolhouse as provided elsewhere in this chapter.

9. To examine and license teachers pursuant to the provisions of this chapter. He shall also conduct such other examinations as the commissioner of education shall direct.

10. To examine any charge affecting the moral character of any teacher residing or employed within his district, and to revoke such teacher's certificate as elsewhere provided by this chapter.

11. To take affidavits and administer oaths in all matters pertaining to the public school system, but without charge or fee.

12. To take and report to the commissioner of education under the direction of such commissioner testimony in a case on appeal. In such a case or in any matter or proceeding to be heard or determined by the district superintendent, he may issue a subpoena to compel the attendance of a witness. Service of such subpoena shall be made a reasonable time before the date named therein for the hearing, by exhibiting the same to the person so served, with the signature of the district superintendent of schools attached, and by leaving a copy thereof with such person. The witness shall be entitled to receive at the time of service, the same fees as provided by law for witnesses in a court of record. Disobedience to such subpoena shall subject the delinquent to a penalty of twenty-five dollars, which shall be recovered by the county treasurer in his name of office for the benefit of the county.

13. To exercise in his discretion any of the powers and perform any of the duties of another district superintendent on the written request of such other superintendent, and he must exercise such powers and perform such duties when directed to do so by the commissioner of education.

14. To make such investigations and to make such reports to the commissioner of education upon any matter or act as said commissioner shall from time to time request. He shall make an annual report on the first day of September in such form and giving such information as the commissioner of education shall require. For this purpose he shall procure the reports of trustees of school districts from the town clerks' offices and after abstracting the necessary contents thereof shall indorse and deposit them with a copy of his abstract in the office of the county clerk.

New. Laws 1910, ch. 607, as amended by L. 1913, ch. 511. Section 395 of the Education Law of 1910 (ch. 140) related to "School commissioner not to be interested in certain business or to accept rewards, etc.," and was Education Law of 1909, § 315, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 12.

Section 395 of the Education Law of 1909 is now covered by section 423.

§ 396. District superintendent subject to the rules of commissioner of education. A district superintendent shall be subject to such rules and directions as the commissioner of education shall from time to time prescribe.

New. Laws 1910, ch. 607. There was no section 396 in the Education Law of 1910 (ch. 140). Section 396 of the Education Law of 1909 related to "Amendment of tax-lists," and is now covered by section 424.

§ 397. Other duties of a district superintendent. A district superintendent of schools shall, in addition to the duties especially conferred upon him by this title, possess and be subject to all the powers, duties and responsibilities with which a school commissioner is charged by law.

New. Laws of 1910, ch. 607. There was no section 397 in the Education Law of 1910 (ch. 140). Section 397 of the Education Law of 1909 related to "Collector's notice," and is now covered by section 425

§ 398. Appeals from acts of district superintendent, et cetera. Appeals from the official acts of a district superintendent of schools or from his refusal or failure to act in any matter in which he may legally act, may be taken to the commissioner of education. All questions in controversy relating to the election of such district superintendent or to the formation of supervisory district shall be determined by the commissioner of education on proper appeal. The provisions of article fourteen of this chapter shall apply to and govern such appeals and decisions therein.

New. Laws 1910, ch. 607. Section 398 of the Election Law of 1909 related to "Collector's fees," and is now covered by section 426.

Sections 399–409 of the Education Law of 1909 are now covered by sections 427–437, respectively.

ARTICLE 15

Assessment and Collection of Taxes

Section 410. Assessment of taxes.
411. Property to be assessed.
412. Ascertainment of valuations.
413. Power of trustees to determine values.
414. Equalization within joint districts.
415. Assessment of vacant land.
416. Persons working land on shares and vendees in possession liable to taxation.
417. Liability of property of certain absentee owners.
418. Certain exemptions from tax for building schoolhouse.
419. Right of certain tenants to charge tax to landlord.
420. Requisites and authority of collector's warrant.
421. Time for delivery of warrant to collector.
422. Jurisdiction of collector.
423. Renewals of warrants.
424. Amendment of tax lists.
425. Collector's notice.
426. Collector's fees.
427. Notice to railroad companies and certain other corporations of assessment and tax.
428. Payment of tax by railroad and certain other corporations to county treasurer.
429. Duty of collector after failure of railroad and certain other corporations to pay within thirty days.
430. Payment of tax by county treasurer to collector.
431. Railroad company may pay collector.
432. Trustees' right of action to recover tax.
433. Collector's return of unpaid taxes.
434. Certification by trustees of collector's return.
435. Payment of unpaid taxes from county treasury.
436. Levy by supervisors of unpaid taxes.
437. Payment before levy.
438. Proceedings for collection same as of county taxes.
439. Filing tax-list and warrant with town clerk.
440. Assessment for school purposes of certain state lands.

§ 410. Assessment of taxes. Immediately[1] after a tax shall have been voted by a district meeting, for a purpose arising during the current school year[2] the trustees shall assess it, and make out the tax-list therefor, and annex thereto their warrant for its collection. [3]Where a tax is voted at an annual school meeting for school purposes during the following school year the said trustees shall prepare their tax-list therefor and annex thereto their warrant for its collection within thirty days after August first. But they may at the same time assess two or more taxes so voted, and any taxes they are authorized to raise without such vote, and make out one tax-list and one warrant for the collection of the whole. They shall prefix to their tax-list a heading showing for what purpose the different items of the tax are levied.

Amended to read as above by L. 1911, ch. 830. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 380, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 62.

Section 410 of the Education Law of 1909 is now covered by section 438.

Applicability of Tax Law.— Where the city of New York constructed a dam involving a large area of land situated in four school districts, the dam itself and the house of the resident city engineer being situated in one of the districts, the provisions of the Education Law rather than those of the Tax Law governed with regard to the assessment of the property. It was ruled that it might be separately assessed as theretofore. Op. Atty.-Gen. (1903) 431.

Duties of town assessors.— The provisions of this section with respect to the duties of school trustees as assessing officers do not in any way define the duties of the town assessors. People v. Howell, (1905) 106 App. Div. 140, 94 N. Y. S. 488.

Duty to observe statutory requirements.— If any other method than that prescribed by the statute is followed by the trustees of a school district in making an assessment, the tax in question is illegally imposed and the party in interest is entitled to have it refunded. Matter of Chadwick, (1901) 59 App. Div. 334, 69 N. Y. S. 853.

Necessity that tax be voted prior to its assessment.— The trustees have no authority to assess a tax unless the same has been voted at a district meeting and they are liable in conversion for property taken for the collection of a tax assessed without such a vote. Enos v. Hulett, (1852) 13 Barb. 111; Mead v. Gale, (1845) 2 Denio 232.

When a majority may act.—A majority of the trustees of a school district may act in making a tax assessment and issuing a warrant if notice has been given to all. Porter v. Robinson, (1881) 12 Wkly. Dig. 209.

Delegation of the trustee's authority.— One of three trustees of a school district has no right to delegate his authority to make an assessment or apportionment of a tax to the other two. "Neither could he after they had made it ratify and adopt the assessment or apportionment by endorsing his approval in the absence of the others." An assessment so made was held illegal and the two trustees who issued a warrant without the concurrence

[1] Formerly "Within thirty days."
[2] Words "for a purpose arising during the current school year," new.
[3] Following sentence, new.

of the third were held liable as trespassers. Keeler v. Frost, (1856) 22 Barb. 400.

Effect of errors in assessment.— Where the trustees of a school district had power to assess the property in question but did so erroneously, the warrant issued to the collector for the collection of the tax was nevertheless a complete protection to him. Alexander v. Hoyt, (1831) 7 Wend. 89. The duties performed by the trustees of a school district in valuing the taxable property of the district for tax purposes are quasi-judicial and they are not personally responsible for mistakes made in the performance of it. Folsom v. Streeter, (1840) 24 Wend. 266. But where the trustees erroneously decided that a certain person was an inhabitant of their district and assessed him accordingly, they were held personally liable for the damages sustained by reason of the sale of his property for the collection of the tax since their act in deciding the question of his residence could not be considered as in the nature of a judicial act so as to relieve them from liability for the error. Palmer v. Lawrence, (1872) 6 Lans. 282. And where a person was assessed for a school tax in a district in which he was not subject to such taxation, both the trustee who issued the warrant for the collection of the tax and the collector who made the levy are liable as trespassers since no jurisdiction was acquired. Suydam v. Keys, (1816) 13 Johns. 444.

Effect of excessive assessment.—Where a trustee of a school district had authority to make an assessment to provide for expenditures made by him, the fact that he made such assessment for a larger amount than was authorized, did not render the whole tax void and enable a taxpayer who was within the jurisdiction of the trustee and therefore subject to the assessment, to maintain an action of replevin against the trustee and collector to recover property seized in satisfaction of the tax. Norris v. Jones, (1893) 7 Misc. 198, 27 N. Y. S. 209, affirmed on opinion below, 81 Hun 304.

Omission of heading from tax lists.— The provisions of this section which require the trustees to prefix a heading showing for what purpose the different items of the tax is levied is directory and not mandatory, and the omission of such heading does not render void all subsequent proceedings under the list. Porter v. Robinson, (1881) 12 Wkly. Dig. 209. See § 420.

§ 411. Property to be assessed. 1. School district taxes shall be apportioned by the trustees upon all real estate within the boundaries of the district which shall not be by law exempt from taxation, except as hereinafter provided, and such property shall be assessed to the person or corporation owning or possessing the same at the time such tax-list shall be made out.

2. The trustees shall also apportion the district taxes upon all persons residing in the district, and upon all corporations liable to taxation therein, for the personal estate owned by them and liable to taxation.

3. Land lying in one body and occupied by the same person, either as owner or agent for the same principal, or as tenant under the same landlord, if assessed as one lot on the last assessment-roll of the town after revision by the assessors, shall, though situated partly in two or more school districts, be taxable in that one of them in which such occupant resides. This rule shall not apply

to land owned by non-residents of the district, and which shall not be occupied by an agent, servant or tenant residing in the district. Such unoccupied real estate shall be assessed as non-resident, and a description thereof shall be entered in the tax-list.

This section was derived from Education Law of 1909, § 381, as amended by L. 1909, ch. 415. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 63. The report of the Board of Statutory Consolidation (1907) at page 1170 refers to certain changes made by the board as follows: "Part relating to the assessment and taxation of bank stock is superseded by Tax Law, art. 2. Such stock is not now assessed by school district trustees."

Section 411 of the Education Law of 1909 is now covered by section 439.

What property may be placed on tax lists.— Property used in connection with a special franchise which has come into existence since the last town assessment roll cannot be placed upon school district tax lists. Op. Atty.-Gen. (1913) 526.

Assessment of lands to an "estate."— Lands cannot properly be assessed for school purposes to an "estate" and property so assessed is in law "omitted" property. Matter of Chadwick, (1901) 59 App. Div. 334, 69 N. Y. S. 853.

Liability for errors in apportioning tax.— The acts of the trustees in apportioning a tax are in their nature quasi-judicial and they consequently are not personally responsible for errors or mistakes made in the performance thereof. Hill v. Sellick, (1855) 21 Barb. 207; Folsom v. Streeter, (1840) 24 Wend. 266; Easton v. Calendar, (1833) 11 Wend. 90. See also Randall v. Smith, (1845) 1 Denio 214. But see Alexander v. Hoyt, (1831) 7 Wend. 89, which is said in Hill v. Sellick, supra, to have been overruled by the later cases. Although the trustees in apportioning a tax among the taxpaying inhabitants of their district are required to apportion only the sum voted, exclusive of the percentage allowed the collector, still it was held that where an apportionment was made upon the sum voted and the percentage, the trustees were not liable as trespassers for causing property to be sold for the collection of such tax. Easton v. Calendar, (1833) 11 Wend. 90. The trustees are not chargeable as trespassers for an omission to insert the names of all the taxable inhabitants in the tax lists in the absence of evidence of mala fides. Easton v. Calendar, (1833) 11 Wend. 90.

Concurrent action by trustees in making apportionment.—All of the trustees of a school district must be associated in the apportionment of a tax and the issuance of a warrant for the collection thereof. Harding v. Head, (1860) 35 Barb. 35.

Apportionment of taxes to railroad corporations.— The provisions of L. 1867, ch. 694, were intended "to regulate the valuation in towns of property of railroad corporations for purposes of school district taxation only," and did not "contemplate that the apportionment therein provided to be made, should be indicated on the town assessment-roll, but by a certificate of the assessors to be prepared and filed in the town clerk's office" after the completion of the roll. People v. Adams, (1891) 125 N. Y. 471, 26 N. E. 746.

Land situated partly in two or more districts.—"Where a farm is located in two or more school districts it is just that it should be assessed and pay taxes in the district where the occupant resides, for he has the right to send his children and those of school age residing with him to the school in that district without paying tuition. It might often be inconvenient to divide a farm for purposes of assessment, and no injustice can result from the assessment of a farm in the tax district or in the school district where the occupant resides." People v. Marenus, (1909) 134 App. Div. 170, 118 N. Y. S. 838, affirming 62 Misc. 317, 116 N. Y. S. 189. In determining the applicability of subdivision 3 of this section there are "three material elements or tests, viz: (1) occupation of the entire tract by 'the same

person' of the given character; (2) assessment of the entire tract as one lot by the town assessors upon the last roll; and (3) residence of such occupant in one of the two school districts." People v. Marenus, (1908) 62 Misc. 317, 116 N. Y. S. 189, affirmed 134 App. Div. 170, 118 N. Y. S. 838. The words "occupied by the same person" are applicable only to lands occupied by a natural person and not to lands occupied by a corporation; and the statute does not require a tract of land lying in one body but in different school districts, occupied by a corporation, to be assessed as one body. People v. Marenus, (1908) 62 Misc. 317, 116 N. Y. S. 189, affirmed 134 App. Div. 170, 118 N. Y. S. 838.

"A tract of land a mile long, having upon it over fifty buildings used for manufacturing purposes" does not fall within the meaning of subdivision 3 of this section. People v. Marenus, (1909) 134 App. Div. 170, 118 N. Y. S. 838, affirming 62 Misc. 317, 116 N. Y. S. 189.

Right to have land assessed as one tract.— Where a tract of land was occupied by a relator and his servants as one tract, made up, however, of separate parcels bearing distinctive names, all situated in one tax district, but in three school districts, it was held that the provision of the section, "if assessed as one lot on the last assessment-roll of the town after revision by the assessors," plainly contemplated that such land might not in all cases be assessed as one lot on the assessment-roll of the town, as the statute was clearly not intended, to give the owner the absolute right to be assessed and pay taxes only in the school district in which he resided on the theory as claimed by the relator that there he had a right to vote. In general the location of the land and not the residence of the owner determines where it shall be taxable, and the provisions respecting parcels situated in two or more tax districts were adopted only for the purpose of preventing confusion and possible assessment in more than one place, and except so far as the statute provides a different rule, land is liable to taxation in the district where situated, whether it be a school district or a tax district and the provisions of the statute were clearly adopted so that school trustees in assessing land in their respective districts should follow so far as possible the method of assessment adopted by the town assessors, thereby assuring a uniform rule of asessment, and the avoidance of the possibility of land being assessed in more than one district, and the town assessors were therefore not required to assess the land to the relator as one parcel. People v. Howell, (1905) 106 App. Div. 140, 94 N. Y. S. 488. And the words of the section describing land as "occupied by the same person" are to be construed as applicable only to lands occupied by a natural person, and not to lands occupied by a corporation; and the statute does not require a tract of land lying in one body but in different school districts, occupied by a corporation, to be assessed as one tract. People v. Marenus, (1908) 62 Misc. 317, 110 N. Y. S. 189, affirmed 134 App. Div. 170, 118 N. Y. S. 838.

Seizure of property situated without the assessing district.— Under a former statute which provided that "where the line between two towns or wards divides a farm or lot, the same shall be taxed, if occupied, in the town or ward where the occupant resides," it was held that the school tax collector of a town which had properly assessed occupied farm lands lying both in it and another town, could seize any personal property for the collection of the tax which he could find on the property so assessed even though it happened to lie without the physical boundaries of the town making the assessment, since the whole farm was considered for the purpose of the assessment and collection of the tax as lying within the town where the owner's residence was situated. Ward v. Aylesworth, (1832) 9 Wend. 281. See also infra, § 420.

§ 412. Ascertainment of valuations. The valuations of taxable property shall be ascertained, so far as possible, from the last

assessment-roll of the town, after revision by the assessors; and no person shall be entitled to any reduction in the valuation of such property, as so ascertained, unless he shall give notice of his claim to such reduction in writing to the trustees of the district before the tax-list shall be made out.

This section was Education Law of 1909, § 382, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 64.

§ 413. Power of trustees to determine values. The trustees of a district shall ascertain the true value of the property to be taxed from the best evidence in their power, giving notice to the persons interested, and proceeding in the same manner as the town assessors are required by law to proceed in the valuation of taxable property, the hearing of grievances, and the revision of the town assessment-roll in the following cases:

1. When a reduction shall be duly claimed and where the valuation of taxable property cannot be ascertained from the last completed assessment-roll of the town;

2. When the valuation of such property shall have increased or diminished since the last assessment-roll of the town was completed;

3. When an error, mistake, or omission on the part of the town assessors shall have been made in the description or valuation of taxable property.

This section was derived from Education Law of 1909, § 383, as amended by L. 1909, ch. 415. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 65.

Effect of failure to give notice.— The trustees' failure to give the required notice renders void a determination made without such notice, the defect being jurisdictional, and they are liable as trespassers for a levy made pursuant to a warrant issued by them for the collection of a tax based on such determination. Jewell v. Van Steenburgh, (1874) 58 N. Y. 85.

§ 414. Equalization within joint districts. When a district embraces parts of two or more towns, the supervisors of such towns shall, upon receiving a written notice from the trustees of such district, or from three or more persons liable to pay taxes upon real estate therein, meet at a time and place to be named in such notice, which time shall not be less than five or more than ten days from the service thereof, and a place within the bounds of the towns so in part embraced, and proceed to inquire and determine whether the valuation of real property upon the several

assessment-rolls of said towns is substantially just as compared with each other.

2. If it is ascertained that such assessments are not relatively equal such supervisor shall determine the relative proportion of taxes that ought to be assessed upon the real property of the parts of such district lying in different towns, and the trustees of such district shall thereupon assess the proportion of any tax thereafter to be raised, according to the determination of such supervisors, until new assessment-rolls of the town shall be perfected and filed, using the assessment-rolls of the several towns to distribute the said proportion among the persons liable to be assessed for the same.

3. If such supervisors shall be unable to agree, they shall summon a supervisor from some adjoining town who shall meet with them and unite in such inquiry and the finding of a majority shall be the determination of such meeting.

4. Such supervisors shall receive for their services three dollars per day for each day actually employed which shall be a town charge upon their respective towns.

This section was, substantially, Education Law of 1909, § 384, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 66.

§ 415. Assessment of vacant land. When any real estate within a district so liable to taxation shall not be occupied and improved by the owner, his servant or agent, and shall not be possessed by any tenant, the trustees of any district, at the time of making out any tax-list by which any tax shall be imposed thereon, shall make and insert in such tax-list a statement and description of every such lot, piece or parcel of land so owned by nonresidents therein, in the same manner as required by law from town assessors in making out the assessment-roll of their towns; and if any such lot is known to belong to an incorporated company liable to taxation in such district, the name of such company shall be specified, and the value of such lot or piece of land shall be set down opposite to such description, which value shall be the same that was affixed to such lot or piece of land in the last assessment-roll of the town; and if the same was not separately valued in such roll, then it shall be valued in proportion to the valuation which

was affixed in the said assessment-roll to the whole tract of which such lot or piece shall be part.

This section was Education Law of 1909, § 385, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 71.

§ 416. Persons working land on shares and vendees in possession liable to taxation. Any person working land under a contract for a share of the produce of such land, shall be deemed the possessor, so far as to render him liable to taxation therefor, in the district where such land is situate, and any person in possession of real property under a contract for the purchase thereof shall be liable to taxation therefor in the district where such real property is situated.

This section was Education Law of 1909, § 388, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 67.

§ 417. Liability of property of certain absentee owners. Every person owning or holding any real property within any school district, who shall improve and occupy the same by his agent or servant, shall, in respect to the liability of such property to taxation, be considered a taxable inhabitant of such district, in the same manner as if he actually resided therein.

This section was Education Law of 1909, § 389, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 68.

Land occupied by agent.— This section applies to land belonging to an owner who does not reside upon it but occupies it by an agent or servant who lives upon it and works it for the owner, such agent being distinguished both from the owner of the land and from a tenant who works it for his own account. Budd v. Allen, (1893) 69 Hun 535, 24 N. Y. S. 5.

§ 418. Certain exemptions from tax for building school-house. Every taxable inhabitant of a district who shall have been, within four years, set off from any other district, without his consent, and shall within that period, have actually paid in such other district, under a lawful assessment therein, a district tax for building a school-house, shall be exempted by the trustees of the district where he shall reside, from the payment of any tax for building a school-house therein.

This section was Education Law of 1909, § 390, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 70.

§ 419. Right of certain tenants to charge tax to landlord. Where any district tax, for the purpose of purchasing a site for a

school-house, or for purchasing or building, keeping in repair, or furnishing such school-house with necessary fuel and appurtenances, shall be lawfully assessed, and paid by any person on account of any real property whereof he is only a tenant at will, or for three years, or for a less period of time, such tenant may charge the owner of such real estate with the amount of the tax so paid by him unless some agreement to the contrary shall have been made by such tenant.

This section was Education Law of 1909, § 391, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 69.

§ 420. Requisites and authority of collector's warrant. The *warant for the collection of a district tax shall be under the hands of the trustees, or a majority of them, with or without their seals; and it shall have the like force and effect as a warrant issued by a board of supervisors to a collector of taxes in the town; and the collector to whom it may be delivered for collection shall be thereby authorized and required to collect from every person in such tax-list named the sum set opposite to his name, or the amount due from any person specified therein, in the same manner that collectors are authorized to collect town and county taxes.

This section was Education Law of 1909, § 392, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 78.

Necessity of observing the statutory provisions.— In issuing a warrant for the collection of a tax, the trustees of a school district are confined strictly to the authority conferred upon them by statute and are trespassers if they depart from the form prescribed although the collector does in fact proceed in conformity with the governing statute. Clarke v. Hallock, (1837) 16 Wend. 607.

Signing of the warrant.— Where all of the trustees are present and concur when a tax is levied and assessed, it is immaterial whether all are present when the warrant is signed, as this is only a ministerial act. Thomas v. Clapp, (1855) 20 Barb. 165.

Presumption as to the signing of the warrant.— The presumption, in the absence of proof, is that the tax list and warrant were made out when all the trustees were present, though signed by but two of them. Doolittle v. Doolittle, (1860) 31 Barb. 312; McCoy v. Curtice, (1832) 9 Wend. 17, 24 Am. Dec. 113.

Trustees' liability where a warrant is improperly issued.— Where a warrant for the collection of a tax was issued by two of the three trustees of a district without consultation with the third, it was held by early cases to be illegal and the trustees were held liable for the value of property seized pursuant thereto. Whitford v. Scott, (1857) 14 How. Pr. 302; Keeler v. Frost, (1856) 22 Barb. 400.

* So in original.

What property may be seized.— Such possession as a boarder in a house or hotel has of the furniture in the room occupied by him does not authorize a collector to seize it for a school tax assessed against such boarder. Denton v. Carroll, (1896) 4 App. Div. 532, 40 N. Y. S. 19.

Proof of unlawful taking and detention in action of replevin against collector.— In an action to replevy certain property seized by a school tax collector to satisfy a tax, the affidavit delivered to the sheriff stated that the taking and detention by the collector was unlawful since the tax in question included "moneys to be raised thereby which were not legally, properly and justly chargeable to said district." It also alleged that the trustee and collector of the district "were not legally competent to hold the office as claimed by them." The court held that this affidavit "was wholly insufficient to authorize the taking of the property from the collector," since "it did not state the facts showing that the levy was unlawful by reason of defects in the process or by reason of facts which had subsequently occurred. . . . It should have specified the moneys included in the assessment that were not legally chargeable to the district so that the court could determine from the facts alleged whether the taking was unlawful or not." Norris v. Jones, (1894) 81 Hun 304, 27 N. Y. S. 209, 30 N. Y. S. 1134 mem.

Effect of an excessive sale.— Where several chattels were seized by a school tax collector and enough sold to satisfy the demand, the sale of the remainder was held to be a trespass and the officer liable therefor. Denton v. Carroll, (1896) 4 App. Div. 532, 40 N. Y. S. 19. So, where a warrant was issued for the collection of a greater amount than was then unpaid on a school tax, it was held in an early case that the taxpayer's remedy was "not in trespass or trover for the property sold; because the property was rightfully taken for so much as was due" but rather "in case for the injury sustained or in assumpsit." Seaman v. Benson, (1848) 4 Barb. 444.

Credibility of evidence as to property ownership.— In a controversy as to whether the landlady or one of her boarders was the owner of chattels seized and sold under a warrant for the collection of a school tax, the jury is not at liberty to disregard the uncontradicted evidence of the landlady which is in nowise impeached and whose testimony is such that its truth is highly probable, simply because she is a party or interested in the controversy. Denton v. Carroll, (1896) 4 App. Div. 532, 40 N. Y. S. 19.

When warrant returnable.— In Frederick v. Dorn, (1901) 66 App. Div. 97, 72 N. Y. S. 673, the warrant was made returnable thirty days after delivery to the collector. The court said: "I find no provision in the statute directing at what time such a warrant should be made returnable. . . . It may be assumed from the present law, however, that the trustee issuing the warrant has a discretion as to the time in which it is to be returned; but that it cannot be made returnable in less than 'thirty days from the time of posting said notice' would seem to be clear, for all that time the taxpayers have to pay voluntarily at one per cent fees added to the tax. It would seem unreasonable and illogical, therefore, for a warrant to direct the compulsory collection of a tax within the thirty days as this warrant does, and for that reason also I think it void. There must be some time after the thirty days permitted to the collector to enforce payment if he is to be held, or his bondsmen are to be held, for a failure of duty in that respect."

Warrant as a protection to collector.— For decisions under earlier statutes, see Doolittle v. Doolittle, (1860) 31 Barb. 312; Hallock v. Rumsey, (1880) 22 Hun 89; Suydam v. Keys, (1816) 13 Johns. 444.

§ 421. Time for delivery of warrant to collector. 1. A warrant for the collection of a tax voted by the district shall not be delivered to the collector until the thirty-first day after the tax was voted.

2. A warrant for the collection of a tax authorized by law without a vote of the district may be delivered to the collector whenever the same is completed.

This section was, substantially, Education Law of 1909, § 393, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 79.

§ 422. Jurisdiction of collector. Any collector to whom any tax-list and warrant may be delivered for collection may execute the same in any other district or town in the same county, or in any other county where the district is a joint district and composed of territory from adjoining counties, in the same manner and with the like authority as in the district in which the trustees issuing the said warrant may reside, and for the benefit of which said tax is intended to be collected; and the bond or sureties of any collector, given for the faithful performance of his official duties, are hereby declared and made liable for any moneys received or collected on any such tax-list and warrant.

This section was Education Law of 1909, § 394, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 82.

§ 423. Renewals of warrants. If the sum of money, payable by any person named in such tax-lists, shall not be paid by him or collected by such warrant within the time therein limited, it shall be lawful for the trustees to renew such warrant in respect to such delinquent person; and whenever more than one renewal of a warrant for the collection of any tax-list may become necessary in any district, the trustees may make such further renewal, with the written approval of the supervisor of any town in which a school-house of said district may be located, to be indorsed upon such warrant.

This section was, substantially, Education Law of 1909, § 395, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 83.

Renewal as a new process.—Although a warrant for the collection of a school tax was invalid it was held, nevertheless, that a renewal thereof made it a new process and corrected the defect in the original. Smith v. Randall, (1842) 3 Hill 495.

Power to renew as including power to issue new warrant.— The grant of power to the trustees of a school district to renew a warrant for the collection of a tax includes the power to issue a new warrant for the same purpose. Seaman v. Benson, (1848) 4 Barb. 444.

Change of warrant on renewal.—After a warrant had been issued for thirty days, and after a considerable portion of the tax had been collected, the trustee of a school district renewed the warrant as to delinquents upon the request of the collector, but changed the tax list by reducing the assessments of certain persons. The changes were apparent on the face of the warrant

and were known to the collector at the time they were made. The warrant was declared to be void. Frederick v. Dorn, (1901) 66 App. Div. 97, 72 N. Y. S. 673.

Renewal of warrant after repeal of tax.— In an action of trover brought against the trustees of a school district to recover the value of property seized pursuant to a warrant issued by the defendants for the collection of a tax, it appeared that the tax in question having been voted to defray the expense of building a new schoolhouse, the tax list and warrant were then prepared; that subsequently the tax was repealed but still later the vote to repeal the tax was itself repealed whereupon the warrant was renewed and delivered to the collector. On these facts it was held that even though the tax was revived by the vote last mentioned, still a new tax list and warrant should have been made out and the levy was consequently illegal. The plaintiffs were allowed to recover. Mead v. Gale, (1845) 2 Denio 232.

Trustee's liability on renewal warrant.— Inasmuch as the renewal of a warrant for the collection of a school tax is equivalent to the issuance of a new one, a trustee who refused to sign the renewal is not liable for any act done thereunder. Thomas v. Clapp, (1855) 20 Barb. 165.

Supervisor's approval.— Where a few days after a warrant for the collection of a school tax had run out, the trustee indorsed thereon the words "renewed for ten days," and before the ten days had expired again indorsed it as "renewed for twenty days from the time it run out," the first indorsement amounted to the issuance of a new warrant and it was not necessary that the second indorsement have the approval of the supervisor as a second renewal. Baker v. Lee, (1886) 41 Hun 591, 5 N. Y. St. Rep. 225.

§ 424. Amendment of tax-lists. Whenever the trustees of any school district shall discover any error in a tax-list made out by them, they may, with the approval and consent of the commissioner of education, after refunding any amount that may have been improperly collected on such tax-list, if the same shall be required by him, amend and correct such tax-list, as directed by the commissioner, in conformity to law.

This section was Education Law of 1909, § 396, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 84.

Nature of trustees' authority.— The trustees of a school district have the right to supply omissions in making out the roll for school taxes but they have no power to rectify errors in judgment made by the town assessors. Op. Atty.-Gen. (1900) 243.

Change of tax list after collection of portion of tax.—After a considerable portion of a tax has been collected, the trustees have not authority to change the tax list by reducing the assessments of certain persons, and where such changes are apparent on the face of the warrant and are known to the collector at the time they are made, they will render the warrant void. Frederick v. Dorn, (1901) 66 App. Div. 97, 72 N. Y. S. 673.

How correction is to be made.—An error made by the trustees of a school district in the assessment of property may only be corrected by themselves with the consent of the commissioner of education. Such correction cannot be made by the town assessors or by the board of supervisors. Matter of Chadwick, (1901) 59 App. Div. 334, 69 N. Y. S. 853.

Authority to order refund.— Where, in a proceeding for the refund of certain taxes, including among others school taxes levied by the authorities of a school district, it appeared that all action with regard to such school taxes had been taken by the school board and its collector, it was held that the

County Court had no authority under the County Law (L. 1892, ch. 686, § 16) to make an order refunding such school taxes. Matter of Reid, (1900) 52 App. Div. 243, 65 N. Y. S. 373.

§ 425. Collector's notice. 1. The collector, on the receipt of a warrant for the collection of taxes, shall give notice to the taxpayers of the district by publicly posting written or printed, or partly written and partly printed, notices in at least three public places in such district, one of which shall be on the outside of the front door of the school-house, stating that he has received such warrant and will receive all such taxes as may be voluntarily paid to him within thirty days from the time of posting said notice.

2. Such collector shall also give a like notice, either personally or by mail, at least twenty days previous to the expiration of the thirty days aforesaid, to the president, secretary, general or division superintendent, or manager of any canal or pipe line, assessed for taxes upon the tax-list delivered to him with the aforesaid warrant.

3. Such collector shall also give a like notice to all nonresident taxpayers on said list whose tax amounts to one dollar or more and whose residence or post-office address may be known to such collector, or may be ascertained by him upon inquiry of the trustees and clerk of his district.

4. No school collector shall be entitled to recover from any railroad corporation, canal company or pipe line, or nonresident taxpayer more than one per centum fees on the taxes assessed against such corporation or nonresident, unless such notice shall have been given as aforesaid; and in case the whole amount of taxes shall not be so paid in, the collector shall forthwith proceed to collect the same.

This section with the exception noted below, was substantially Education Law of 1909, § 397, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 81, as amended by L. 1896, ch. 575, § 1, and L. 1899, ch. 440, § 1. The exception referred to above occurs in subdivision 2 of section 425. That portion of section 397 of Education Law of 1909 which became section 425, subdivision 2 of the Education Law of 1910, read as follows: "Such collector shall also give a like notice, either personally or by mail, at least twenty days previous to the expiration of the thirty days aforesaid, to the ticket agent at the nearest station of any railroad corporation, or the president, secretary, general or division superintendent, or manager of any canal or pipe line, assessed for taxes upon the tax-list delivered to him with the aforesaid warrant."

Effect of lack of notice.—Certain wild forest land, owned by a nonresident, were sold by the comptroller for unpaid state, county, town, highway and school taxes, imposed for several years, all having been blended together in

one sum, and were bid in by the state for an aggregate amount. It appeared that one of the assessments for the school taxes included a part of such lands which lay beyond the taxable limits of the school district and that the owner of such lands received no notice of the assessment. It was held consequently that the sale was invalid and that no title passed thereby to the state, notwithstanding the fact that the illegal school tax constituted only a small part of the unpaid taxes involved in the sale. Saranac Land, etc., Co. v. Roberts, (1909) 195 N. Y. 303, 88 N. E. 753.

§ 426. Collector's fees. The collector shall receive for his services on all sums paid in as aforesaid, one per centum, and upon all sums collected by him, after the expiration of the time mentioned, five per centum, except as hereinbefore provided; and in case a levy and sale shall be necessarily made by such collector, he shall be entitled to traveling fees, at the rate of ten cents per mile, to be computed from the school-house in such district.

This section was Education Law of 1909, § 398, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 81, as amended by L. 1896, ch. 575, § 1, and L. 1899, ch. 440, § 1.

Effect of attempt to change amount of collector's fees.—A warrant for the collection of a school tax, which directed the collector to receive such taxes " as may be voluntarily paid to you for two successive weeks after the delivery to you of this warrant, together with one cent on each dollar thereof for your fees, and after the expiration of the time above mentioned, to proceed forthwith to collect the residue of the sums not so paid in as aforesaid, with five cents on each dollar thereof for your fees,' " was held void inasmuch as the collector is required to receive all taxes paid within thirty days from the posting of his notice at one per cent. Frederick v. Dorn, (1901) 66 App. Div. 97, 72 N. Y. S. 673. See § 425.

§ 427. Notice to railroad companies and certain other corporations[1] of assessment and tax. 1. It shall be the duty of the school collector in each school district in this state, within five days after the receipt by such collector of any and every tax or assessment roll of his district, to prepare and deliver to the county treasurer of the county in which such district, or the greater part thereof, is situated, a statement showing the name of each railroad, telegraph, telephone, electric light or gas[2] company, including a company engaged in the business of supplying natural gas,[3] appearing in said roll, the assessment against each of said companies for real and personal property respectively, and the tax against each of said companies.

2. It shall thereupon be the duty of such county treasurer,

[1] Words " and certain other corporations," new.

[2] Words " telegraph, telephone, electric light or gas," new.

[3] Words " including a company engaged in the business of supplying natural gas," new.

immediately after the receipt by him of such statement from such school collector, to notify the ticket agent or manager[1] of any such railroad, telegraph, telephone, electric light or gas[2] company, including a company engaged in the business of supplying natural gas[3] assessed for taxes at the station or office[4] nearest to the office of such county treasurer or to notify the company at its principal office within this state[5] personally or by mail, of the fact that such statement has been filed with him by such collector, at the same time specifying the amount of tax to be paid by such [6]company.

Amended to read as above by L. 1913, ch. 216. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, which came from L. 1881, ch. 675, § 1, as amended by L. 1882, ch. 319, § 1, and L. 1885, ch. 533, § 1.

§ 428. Payment of tax by railroad and certain other corporations[7] to county treasurer. Any railroad company heretofore organized, or which may hereafter be organized, under the laws of this state and any telegraph, telephone, electric light or gas company including a company engaged in the business of supplying natural gas[8] may within thirty days after the receipt of such statement by such county treasurer, pay the amount of tax so levied or assessed against it in such a district and in such statement mentioned and contained with one per centum fees thereon, to such county treasurer, who is hereby authorized and directed to receive such amount and to give proper receipt therefor.

Amended to read as above by L. 1913, ch. 216. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 400, which came from L. 1881, ch. 675, § 2.

§ 429. Duty of collector after failure of railroad and certain other corporations[7] to pay within thirty days. In case any railroad company and any telegraph, telephone, electric light or gas company including a company engaged in the business of supply-

1 Words "or manager," new.
2 Words "telegraph, telephone, electric light or gas," new.
3 Words "including a company engaged in the business of supplying natural gas," new.
4 Words "or office," new.
5 Words "or to notify the company at its principal office within this state," new.
6 Word "railroad" omitted.
7 Words "and certain other corporations," substituted for word "company."
8 Words "and any telegraph . . . supplying natural gas," new.

ing natural gas[1] shall fail to pay such tax within said thirty days, it shall be the duty of such county treasurer to notify the collector of the school district in which such delinquent railroad company is assessed, of its failure to pay said tax, and upon receipt of such notice it shall be the duty of such collector to collect such unpaid tax in the manner now provided by law together with five per centum fees thereon; but no school collector shall collect by distress and sale any tax levied or assessed in his district upon the property of any such[2] company until the receipt by him of such notice from the county treasurer.

Amended to read as above by L. 1913, ch. 216. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 401, which came from L. 1881, ch. 675, § 3.

§ 430. Payment of tax by county treasurer to collector. The several amounts of tax received by any county treasurer in this state, under the provisions of the last three sections, of and from such[2] companies, shall be by such county treasurer placed to the credit of the school district for or on account of which the same was levied or assessed, and on demand paid over to the school collector thereof, and the one per centum fees received therewith shall be placed to the credit of, and on demand paid to the school collector of such school district.

Amended to read as above by L. 1913, ch. 216. The change is indicated in the footnote.

This section was derived from Education Law of 1909, § 402, which came from L. 1881, ch. 675, § 4.

Section 430 of the Education Law of 1909 is now covered by section 480.

§ 431. Such companies[3] may pay collector. Nothing in the last four sections contained shall be construed to hinder, prevent or prohibit any railroad company or telegraph, telephone, electric light or gas company including a company engaged in the business of supplying natural gas[4] from paying its school tax to the school collector direct, as provided by law.

Amended to read as above by L. 1913, ch. 216. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 403, which came from L. 1881, ch. 675, § 5.

1 Words "and any telegraph . . . supplying natural gas," new.
2 Word "such" substituted for word "railroad."
3 Words "Such companies" substituted for words "Railroad company."
4 Words "or telegraph . . . supplying natural gas," new.

§ 432. Trustees' right of action to recover tax. Whenever any sum of money payable by any person named in such tax-list, shall not be paid by such person, or collected by such warrant within the time therein limited, or the time limited by any renewal of such warrant; or in case the property assessed be real estate belonging to an incorporated company, and no goods or chattels can be found whereon to levy the tax, the trustees may sue for and recover the same in their name of office.

This section was Education Law of 1909, § 404, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 85.

When action may be maintained.—An action for the collection of an unpaid tax cannot be maintained against a resident of the district so long as he has any personal property within such district out of which the tax may be satisfied. Chrigstrom v. McGregor, (1893) 74 Hun 343, 26 N. Y. S. 517.

§ 433. Collector's return of unpaid taxes. If any tax on real estate placed upon the tax-list and duly delivered to the collector, or the taxes upon nonresident stockholders in banking associations organized under the laws of congress, shall be unpaid at the time the collector is required by law to return his warrant, he shall deliver to the trustees of the district an account of the taxes remaining due, containing a description of the lands upon which such taxes were unpaid as the same were placed upon the tax-list, together with the amount of the tax so assessed, and upon making oath before any justice of the peace or judge of a court of record, notary public or any other officer authorized to administer oaths, that the taxes mentioned in any such account remain unpaid, and that, after diligent efforts, he has been unable to collect the same, he shall be credited by said trustees with the amount thereof.

This section was Education Law of 1909, § 405, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 72.

§ 434. Certification by trustees of collector's return. Upon receiving any such account from the collector, the trustees shall compare it with the original tax-list, and if they find it to be a true transcript they shall add to such account their certificate to the effect that they have compared it with the original tax-list and found it to be correct, and shall immediately transmit the account, affidavit and certificate to the treasurer of the county.

This section was Education Law of 1909, § 406, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 73.

§ 435. Payment of unpaid taxes from county treasury. Out of any moneys in the county treasury, raised for contingent expenses, or for the purpose of paying the amount of the taxes so returned unpaid, the treasurer shall pay to the district treasurer, if there be such an officer, otherwise to the collector, the amount of the taxes so returned as unpaid, and if there are no moneys in the treasury applicable to such purpose, the board of supervisors, at the time of levying said unpaid taxes, as provided in the next section, shall pay to the district treasurer, if there be such an officer, otherwise to the collector of the school district the amount thereof which has been relevied, by voucher or draft on the county treasurer, in the same manner as other county charges are paid, and the collector shall be charged by the trustees with the amount so relevied.

Amended to read as above by L. 1910, ch. 284; L. 1915, ch. 136.

This section was Education Law of 1909, § 407, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 74, as amended by L. 1895, ch. 769, § 1, and L. 1897, ch. 512, § 4.

Extent of treasurer's authority.— Under the provisions of this section the authority of the county treasurer is limited to the particular fund specified; and if no such fund has been raised, or if it has been exhausted, he has no authority, and consequently no duty to make the payment. People v. Robinson, (1879) 76 N. Y. 422.

§ 436. Levy by supervisors of unpaid taxes. Such account, affidavit and certificate shall be laid by the county treasurer before the board of supervisors of the county, who shall cause the amount of such unpaid taxes, with seven per centum of the amount in addition thereto, to be levied upon the lands upon which the same were imposed; and if imposed upon the lands of any incorporated company, then upon such company; and when collected the same shall be returned to the county treasurer to reimburse the amount so advanced, with the expenses of collection.

This section was Education Law of 1909, § 408, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 75.

Applicability to state lands.— The statutory penalty of seven per centum cannot be added to school taxes assessed against wild forest lands owned by the state. Op. Atty.-Gen. (1913) 698.

§ 437. Payment before levy. Any person whose lands are included in any such account may pay the tax assessed thereon, with five per centum added thereto, to the county treasurer, at

any time before the board of supervisors shall have directed the same to be levied.

This section was Education Law of 1909, § 409, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 76, as amended by L. 1895, ch. 769, § 2.

§ 438. Proceedings for collection same as of county taxes. The same proceedings in all respects shall be had for the collection of the amount so directed to be raised by the board of supervisors as are provided by law in relation to the county taxes; and, upon a similar account, as in the case of county taxes of the arrears thereof uncollected, being transmitted by the county treasurer to the comptroller, the same shall be paid on his warrant to the treasurer of the county advancing the same; and the amount so assumed by the state shall be collected for its benefit, in the manner prescribed by law in respect to the arrears of county taxes upon land of nonresidents; or if any part of the amount so assumed consisted of a tax upon any incorporated company, the same proceedings may also be had for the collection thereof as provided by law in respect to the county taxes assessed upon such company.

This section was Education Law of 1909, § 410, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 77.

§ 439. Filing tax-list and warrant with town clerk. Within fifteen days after any tax-list and warrant shall have been returned by a collector to the trustees of any school district, the trustees shall deliver the same to the town clerk of the town in which the collector resides, and said town clerk shall file the same in his office.

This section was Education Law of 1909, § 411, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 89.

§ 440. Assessment for school purposes of certain state lands. 1. The board of education of union free school district number one, town of Dannemora, in the county of Clinton, shall hereafter assess the property owned by the state and situate within the boundaries of said district, exclusive of the improvements erected thereon by the state at the same valuation as other lands in said district are assessed, and the comptroller shall hereafter pay to the

school authorities of such district the amount of taxes levied upon the land of the state for school purposes in such district by virtue of this section, out of any moneys hereafter appropriated by the legislature for the payment of assessments for local improvements on property owned by the state.

This subdivision was Education Law of 1909, § 386, which came from L. 1905, ch. 563, § 1.

2. The local school authorities of union free school district number two of the town of Wawarsing, Ulster county, districts number six and eight of the town of Dover and districts number one and two of the town of Beekman, Dutchess county, all the school districts in the towns of Highlands, Woodbury and Tuxedo, Orange county, union free school district number one of the town of Ossining in the county of Westchester, and of school districts in the county of Rockland shall hereafter assess the lands owned by the state of New York and situate within the boundaries of said districts, exclusive of the improvements, if any, erected thereon by the state, at the same valuation as similar lands of individuals in said districts are assessed and the comptroller shall hereafter credit to the treasurer of the county wherein such lands are situated the amount of taxes levied upon the lands of the state therein for school purposes from taxes payable by said county treasurer each year to the state for state taxes levied and assessed upon the taxable property of the towns in which such districts are located and upon the adjustment of such taxes so made, the said county treasurer shall pay to the collector of taxes of the school districts in which such lands are situated the amount of such taxes as allowed and so paid by the state.

Subd. 2 was amended to read as above by L. 1911, ch. 593; L. 1915, ch. 125; L. 1916, ch. 407. This subdivision was, in substance, Education Law of 1909, §§ 387, 387-a, section 387-a having been added by L. 1909, ch. 263. Section 387 came from L. 1905, ch. 561, § 1, as amended by L. 1906, ch. 200, § 1.

3. After a tax has been voted by a district meeting in a district specified in the preceding subdivision, in which there is land owned by the state and the trustees have made the assessment and their tax-list therefor, such trustees shall immediately file in the office of the comptroller a duly verified copy of such tax list, which in addition to the other matters now required by law shall state which are lands belonging to the state. The comptroller shall

within thirty days after the receipt of such list and after hearing the trustees, if they or any of them so desire, correct or reduce any assessment of state lands which may be in his judgment an unfair proportion to the remaining assessment of land within the district, and shall in other respects approve the assessment and communicate such approval to the trustees. No such assessment of state lands shall be valid for any purpose until the amount of the assessment is approved by the comptroller.

Subdivision 3 was Education Law of 1909, § 387-a pt. See note to subd. 2, supra.

ARTICLE 16*

School Buildings and Sites

Section 450. No school-house shall be built on town line.
451. Plans and specifications of †new school buildings must be approved by commissioner of education.
452. Halls, doors, stairways, staircases, etc
453. Fire escapes.
454. Use of school buildings for examinations and institutes.
455. Use of school-house and grounds out of school hours.
456. Condemnation of school-house and erection of new school-house in place thereof.
457. Provision for outbuildings.
458. When board of education may designate site without vote of district.
459. Change of site.
460. Site, how designated.
461. Sale of former school-house or site.
462. Application of proceeds of sale.
463. Acquisition of real property.
464. When owner's consent necessary.
465. Vesting of title of lands in certain cases.
466. Application to certain districts.
467. School taxes and †school-bonds.

§ 450. No school-house shall be built on town line. No school-house shall be built so as to stand on the division line of any two towns.

This section was Education Law of 1909, § 110, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 16.

Section 450 of the Education Law of 1909 is now covered by section 490.

Prohibition against liquor traffic within certain distance from schools: see Liquor Tax Law, § 23; note 16 Ann. Cas. 924.

Statutory restrictions as to site of school buildings: see note, 43 L. R. A. (N. S.) 1024.

§ 451. Plans and specifications of school buildings must be approved by commissioner of education. 1. No school-house shall hereafter be erected, repaired, enlarged or remodeled in a city

* This article was article 5 of the Education Law of 1909. Article 16 of the Education Law of 1909 was "School District Bonds."

† So in original.

of the third class or in a school district, at an expense which shall exceed five hundred dollars, until the plans and specifications thereof shall have been submitted to the commissioner of education and his approval indorsed thereon. Such plans and specifications shall show in detail the ventilation, heating and lighting of such buildings.

2. The commissioner of education shall not approve the plans for the erection of any school building or addition thereto or remodeling thereof unless the same shall provide

a. At least fifteen square feet of floor space and two hundred cubic feet of air space for each pupil to be accommodated in each study or recitation room therein.

b. For assuring at least thirty cubic feet of pure air every minute per pupil, and

c. The facilities for exhausting the foul or vitiated air therein shall be positive and independent of atmospheric changes.

3. No tax voted by a district meeting or other competent authority in any such city, or school district exceeding the sum of five hundred dollars, shall be levied by the trustees until the commissioner of education shall certify that the plans and specifications for the same comply with the provisions of this section.

This section was derived from Education Law of 1909, § 111, subds. 1, 2, 3, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 17.

Section 451 of the Education Law of 1909 is now covered by section 491.

Public school building as subject to mechanic's lien: see notes, 17 Ann. Cas. 131; Ann. Cas. 1913A 762.

Fire escapes.— The provisions of subdivision 1 of this section do not apply to fire escapes. Under the Insurance Law the recommendations with regard to fire escapes are left to the fire commissioner, who is not controlled in this respect by the commissioner of education. It is, therefore, the duty of local officers to comply with the recommendations of the fire commissioner. Op. Atty.-Gen. (1912) 306.

Building of schoolhouse as public improvement within Lien Law.—Although the title to a schoolhouse site is held by the trustees "as a so-called corporation and in their corporate name, still the property belongs to the school district" and the "building of a schoolhouse thereon for the use of the district is, therefore, within the fair meaning of the Lien Law, a public and not a private improvement." Terwilliger v. Wheeler, (1903) 81 App. Div. 460, 81 N. Y. S. 173.

§ 452. Halls, doors, stairways, staircases, etc. 1. All schoolhouses for which plans and detailed statements shall be filed and approved, as required by the preceding section shall have all halls, doors, stairways, seats, passage-ways and aisles and all lighting

and heating appliances and apparatus arranged to facilitate egress and afford adequate protection in cases of fire or accident.

2. All exit doors shall open outwardly, and shall, if double doors be used, be fastened with movable bolts operated simultaneously by one handle from the inner face of the door.

3. No staircase shall be constructed with winder steps in lieu of a platform but shall be constructed with straight runs, changes in direction being made by platforms. No door shall open immediately upon a flight of stairs, but a landing at least the width of the door shall be provided between such stairs and such doorway.

This section was, substantially, Education Law of 1909, § 111, subd. 4, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 17, as amended by L. 1904, ch. 28, § 1.

Section 452 of the Education Law of 1909 is now covered by section 492.

Liability of municipal corporation for defective condition of public school premises: see notes, 3 Ann. Cas. 884; 10 Ann. Cas. 406.

§ 453. Fire escapes. 1. All school buildings in the state, except in the city of New York, which are more than two stories high, shall have properly constructed stairways on the outside thereof, with suitable doorways leading thereto, from each story above the first, for use in case of fire. Such stairways shall be kept in good order and free from obstruction, and shall not be bolted or locked during school hours.

2. It shall be the duty of the trustee or board of education having charge of said school buildings to cause such stairways to be constructed and maintained, and the reasonable and proper cost thereof shall in each case be a legal charge upon the district or city, and shall be raised by tax, as other moneys are raised for school purposes.

This section was Education Law of 1909, § 112, the section head being *Outside stairways.* The report of the Board of Statutory Consolidation (1907) at page 1157 refers to certain changes made by the board as follows: "In some districts the governing body is a 'board of trustees' and in others a 'board of education.' The insertion makes the distinction clearer in all districts."

Section 112 of the Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 49.

Section 453 of the Education Law of 1909 is now covered by section 493.

Duty to maintain fire escapes: see notes 9 Ann. Cas. 1166; Ann Cas. 1913E 777.

Construction of fire escapes.— It is the duty of local school officers to comply with the recommendations of the fire commissioner with regard to the construction of fire escapes for school buildings. Op. Atty.-Gen. (1912) 306.

§ 454. Use of school buildings for examinations and institutes. 1. The use of a school building shall be granted for any examination or teachers institute appointed by the commissioner of education upon the request of the school commissioner in whose school commissioner district or the superintendent of the city in which such building is located or upon the direction or order of such commissioner of education.

2. No charge shall be made therefor except when such building is used for a teachers institute, in which case a reasonable allowance may be made to said district or city for lighting, heating and janitor service, provided always that due and proper care shall be maintained and the school building be left in such condition as found in relation to cleanliness and neatness.

This section was derived from Education Law of 1909, § 113, the section head being *Use of school buildings for examinations.* It came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 15.

Section 454 of the Education Law of 1909 is now covered by section 494.

§ 455. Use of schoolhouse and grounds out of school hours. Schoolhouses and the grounds connected therewith and all property belonging to the district shall be in the custody and under the control and supervision of the trustees or board of education of the district. The trustees or board of education may adopt reasonable regulations for the use of such schoolhouses, grounds or other property, when not in use for school purposes. Such regulations shall not conflict with the provisions of this chapter and shall conform to the purposes and intent of this section and shall be subject to review on appeal to the commissioner of education as provided by law. The trustees or board of education of each district may, subject to regulations adopted as above provided, permit the use of the schoolhouse and rooms therein, and the grounds and other property of the district, when not in use for school purposes, for any of the following purposes:

1. By persons assembling therein for the purpose of giving and receiving instruction in any branch of education, learning or the arts.

2. For public library purposes, subject to the provisions of this chapter, or as stations of public libraries.

3. For holding social, civic and recreational meetings and entertainments, and other uses pertaining to the welfare of the com-

munity; but such meetings, entertainment and uses shall be non-exclusive and shall be open to the general public.

4. For meetings, entertainments and occasions where admission fees are charged, when the proceeds thereof are to be expended for an educational or charitable purpose; but such use shall not be permitted if such meetings, entertainments and occasions are under the exclusive control, and the said proceeds are to be applied for the benefit of a society, association or organization of a religious sect or denomination, or of a fraternal, secret or other exclusive society or organization.

5. For polling places for holding primaries and elections, and for the registration of voters, and for holding political meetings. But no such use shall be permitted unless authorized by a vote of a district meeting, held as provided by law. It shall be the duty of the trustees or board of education to call a special meeting for such purpose upon the petition of at least ten per centum of the qualified electors of the district. If such authority be granted by a district meeting it shall be the duty of such trustees or board of education to permit such use, under reasonable regulations to be adopted by such trustees or board until another meeting held in like manner shall have revoked such authority.

Amended to read as above by L. 1913, ch. 221. This section was derived from Education Law of 1909, § 114, the section head being *Use of school-house out of school hours.* It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 52.

Section 455 of the Education Law of 1909 is now covered by section 495.

The use of school buildings and grounds for the purpose of military and disciplinary training is provided for in article 1-a of Military Law, § 29b, as added by L. 1916, ch. 556.

Use of school property for other than school purposes: see notes, 50 L. R. A. (N. S.) 1182; Ann. Cas. 1916C 485.

§ 456. Condemnation of school-house and erection of new school-house in place thereof. 1. A school commissioner may make an order condemning a school-house, if he finds upon examination that such school-house is wholly unfit for use and not worth repairing. He shall deliver such order to a trustee of the district and transmit a copy thereof to the commissioner of education. He shall also state in such order the date on which it shall take effect and the sum which in his opinion will be necessary to erect a school building suitable to the needs of the district.

2. Immediately upon the receipt of said order, the trustees of such district shall call a special meeting of the voters of said

district, to consider the question of building a new school-house therein. Such meeting shall have power to determine the size of said school-house, the material to be used in its erection, and to vote a tax to build the same. But such meeting shall have no power to reduce the estimate made by the commissioner aforesaid by more than twenty-five per centum of such estimate.

3. And where no tax for building such school-house shall have been voted by such district within thirty days from the time of holding the first meeting to consider the question, it shall be the duty of the trustees of such district to contract for the building of a school-house capable of accommodating the children of the district, and to levy a tax to pay for the same, which tax shall not exceed the sum estimated as necessary by the commissioner aforesaid, and which shall not be less than such estimated sum by more than twenty-five per centum thereof. But such estimated sum may be increased at any subsequent school meeting legally held in the district.

This section was derived from Education Law of 1909, § 115. It came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 13, subd. 4, as amended by L. 1897, ch. 512, § 1.

Section 456 of the Education Law of 1909 is now covered by section 496.

Appeal from order of condemnation.—"An appeal may be taken to the commissioner of education from the decision of the school commissioner condemning any school building and directing the construction of a new one." Op. Atty.-Gen. (1904) 379.

A member of the board of education as a contractor.— Where a board of education contracted for the construction of a school building, the fact that one of the subcontractors subsequently became a member of the board does not deprive him of full rights to enforce his contract, nor does the fact that a member of the board was interested in a corporation which was one of the subcontractors invalidate the lien of that company or make illegal a payment for work actually done and accepted. Goodrich v. Board of Education, (1910) 137 App. Div. 499, 122 N. Y. S. 50.

Taxpayer's right to enjoin purchase of school site.— Equity will not enjoin the purchase of a schoolhouse site and the erection of a new schoolhouse thereon at the instance of a taxpayer " where no bad faith or wrong is alleged and the public are in no way injured, and where the basis of the action is merely that all the technical, legal formalities have not been strictly complied with." Lawson v. Lincoln, (1903) 86 App. Div. 217, 83 N. Y. S. 667, affirmed (1904) 178 N. Y. 636, 71 N. E. 1133.

Necessity of pleading illegality of contract in action thereon.— In an action to recover for work done in connection with the erection of a schoolhouse, the illegality of the contract sued on is not available as a defense unless pleaded. Ocorr, etc., Co. v. Little Falls, (1902) 77 App. Div. 592, 79 N. Y. S. 251, affirmed (1904) 178 N. Y. 622, 70 N. E. 1104.

§ 457. Provision for outbuildings. 1. The trustees in the several school districts shall provide at least two suitable and convenient water-closets or privies for each of the schools under their charge,

which shall be entirely separated each from the other, and have separate means of access, and approaches thereto separated by a substantial close fence not less than seven feet in height. It shall also be the duty of trustees to keep such out buildings in a clean and wholesome condition.

2. The board of education of each union free school district and of a city shall provide and maintain at least two suitable and convenient water-closets or privies for each of the schools under their charge, and in conformity with the provisions of this section.

3. Any expense incurred by the trustees of a common school district in carrying out the requirements of this section shall be a charge upon the district, when such expense shall have been authorized by the school commissioner within whose district the school house is located, and a tax may be levied therefor without a vote of the school district. Any expense incurred by the board of education in carrying out the foregoing provisions shall be a charge upon the district or city and payable out of any of the contingent funds thereof; and a tax may be levied therefor without a vote of the district.

4. A failure on the part of the trustees or a board of education to comply with the provisions of this section shall be sufficient grounds for their removal from office and for withholding from the district or city its share of the public moneys of the state.

This section was derived from Education Law of 1909, § 116. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 48, and tit. 8, § 15, subd. 14.

Section 457 of the Education Law of 1909 is now covered by section 497.

Trustee's right to consult taxpayers.—There is no reason why a trustee should not consult with the taxpayers with regard to the location of a privy and the material out of which it should be built, and the fact that he does so does not affect the validity of a contract for its construction. Rauscher v. Cronk, (1888) 50 Hun 602 mem., 3 N. Y. S. 470.

§ 458. When board of education may designate site without vote of district. A board of education in a union free school* containing a population of five thousand or more may, without a vote of the qualified voters of said district, designate sites or additions thereto for school-houses.

This section was Education Law of 1909, § 117, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 15, subd. 16, as added by L. 1903, ch. 112, § 1.

Section 458 of the Education Law of 1909 is now covered by section 498.

* So in original.

§ 459. Change of site. No site of a school-house shall be changed unless a majority of the legal voters present and voting at a district meeting shall adopt a resolution designating a new site and describing such site by metes and bounds. Such resolution shall be adopted either by ballot or taking and recording the ayes and noes.

This section was derived from Education Law of 1909, § 118, the section head being *Requisites for change of site.* It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 19.
Section 459 of the Education Law of 1909 is now covered by section 499.

§ 460. Site, how designated. The designation of a site by any school district meeting shall be by written resolution containing a description thereof by metes and bounds, and such resolution must receive the assent of a majority of the qualified voters present and voting at said meeting, to be ascertained by taking and recording the ayes and noes, or by ballot.

This section was Education Law of 1909, § 119, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 10 pt., as amended by L. 1895, ch. 273, § 1, and L. 1896, ch. 264, § 15.
Section 460 of the Education Law of 1909 is now covered by section 500.

§ 461. Sale of former school-house or site. 1. Whenever the site of a school-house shall have been changed, as herein provided, the inhabitants of a district entitled to vote, lawfully assembled at any district meeting, shall have power, by a majority of the votes of those present, to direct the sale of the former site or lot, and the buildings thereon and appurtenances or any part thereof, at such price and upon such terms as they shall deem proper; and any deed duly executed by the trustees of such district, or a majority of them, in pursuance of such direction, shall be valid and effectual to pass all the estate or interest of such school district in the premises.

2. When a credit shall be directed to be given upon such sale for the consideration money, or any part thereof, the trustees are hereby authorized to take in their corporate name such security by bond and mortgage, or otherwise, for the payment thereof, as they shall deem best, and shall hold the same as a corporation, and account therefor to their successors in office and to the district, in the manner they are now required by law to account for moneys received by them; and the trustees of any such district

and their successors may, in their name of office, sue for and recover the moneys due and unpaid upon any security so taken by them or their predecessors.

This section was, substantially, Education Law of 1909, § 120, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 20.
Section 461 of the Education Law of 1909 is now covered by section 501.

§ 462. Application of proceeds of sale. All moneys arising from any sale made in pursuance of the last preceding section, shall be applied to the expenses incurred in procuring a new site, and in removing or erecting thereon a school-house, and improving and furnishing such site and house, and their appurtenances, so far as such application shall be necessary; and the surplus, if any, shall be devoted to the purchase of school apparatus and the support of the school, as the voters of the district at any meeting shall direct.

This section was, substantially, Education Law of 1909, § 121, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 21.
Section 462 of the Education Law of 1909 is now covered by section 502.

§ 463. Acquisition of real property. Real property may be acquired in any school district and in any city except a city of the first or second class, for school purposes and for any other purpose for which such property may be acquired as provided in this chapter, as follows:

1. By gift, grant, devise or purchase.

2. By condemnation, if an agreement cannot be made with the owner for the purchase thereof. Such proceedings shall be instituted and conducted by the trustee or board of education, in the name of the district under the provisions of the condemnation law.

3. This section does not permit the acquisition by condemnation of less than the whole of a city or village lot with the erections and improvements thereon.

Amended to read as above by L. 1913, ch. 221. This section was derived from Education Law of 1909. It came from Consolidated School Law, L. 1894, ch. 556, tit. 9, § 1, as amended by L. 1901, ch. 480, § 1.

Grants and devises of real estate for educational purposes: see REAL PROPERTY LAW, § 114.

Condemnation proceedings generally: see Code Civ. Pro., § 3357 et seq.

Interest in land acquired by condemnation for school as easement or fee: see note, 20 Ann. Cas.' 571.

Reverter of land conveyed for school purposes: see note 44 L. R. A. (N. S.) 1220.

Construction of deed to trustees.— Where real property was conveyed to the trustees of a school district by a "full covenant warranty deed," the habendum clause of which read, "to have and to hold the above granted, bargained and described premises, with the appurtenances, unto the said parties of the second part, their successors and assigns, for the uses and purposes of school district No. 10, of the said town of Greenburgh, upon which to erect a schoolhouse and other appurtenances for said school district No. 10, in said town of Greenburgh, forever," a claim that the deed was either in trust or that it operated "by way of a dedication of the property to a public use," or that the clause in question was effective as a covenant or condition or that it "qualified the duration of the estate as a limitation upon the time of enjoyment" was untenable. Board of Education v. Reilly, (1902) 71 App. Div. 468, 75 N. Y. S. 876. See § 520.

Provisions with regard to condemnation.— In a proceeding to acquire lands by eminent domain for school purposes, the provisions of the statute must be strictly followed and unless this is done the owner may object to the condemnation of his property. Hemenway v. Schoonmaker, (1909) 134 App. Div. 86, 118 N. Y. S. 931.

§ 464. When owner's consent necessary. The following property cannot be acquired without the consent of the owner:

1. A homestead occupied as such by the owner, [1]except such portion thereof as may appear to the court to be unnecessary for the reasonable use and enjoyment of the homestead.

2. A garden, orchard or any part thereof, not within a city, [1]which has existed for a period of one year prior to the beginning of the condemnation proceedings.

3. A yard or inclosure, or any part thereof, necessary to the use or enjoyment of buildings.

4. Fixtures or erections for the purpose of trade or manufacture, [1]which have existed for a period of one year prior to the beginning of the condemnation proceedings.

Amended to read as above by L. 1911, ch. 782. The change is indicated in the footnote.

This section was derived from Education Law of 1909, § 123, which read as follows:

"§ 123. *Last section limited.* The provisions of the foregoing section shall not apply to cities of more than thirty thousand inhabitants nor shall it be lawful under said section to acquire title to less than the whole of any city or village lot, with the erections thereon, if any, without the consent of such owners; nor beyond the corporate limits of cities, to any garden or orchard, or any part thereof, nor to any part of any yard or inclosure necessary to the use and enjoyment of buildings, or any fixtures or erections for the purposes of trade or manufactures, without the consent of the owners thereof."

This section came from Consolidated School Law, L. 1894, ch. 556, tit. 9, § 2.

§ 465. Vesting of title of lands in certain cases. Boards of education in cities of the third class are hereby clothed with all

[1] Remainder of subdivision new.

the powers of trustees, and the title to any and all lands acquired in any city under the provisions of section four hundred and sixty-three of this chapter shall vest in the board of education thereof, or such other corporate body as is by law vested with the title to the school lands in such city. But nothing herein contained shall be construed to limit or circumscribe the powers and duties heretofore lodged in such board of education by law.

This section, with the exception noted below, was Education Law of 1909, § 124. The exception above referred to consists of the words "the third class," in the first line, which were substituted for the words "not more than thirty thousand inhabitants," in the Education Law of 1909, § 124. The section last cited came from Consolidated School Law, L. 1894, ch. 556, tit. 9, § 3.

§ 466. Application to certain districts. The provision of section four hundred and sixty-three of this article shall apply to union free school districts and to districts organized under special laws; and the trustees of such districts and the boards of education organized under special laws shall be and are hereby clothed with all the powers vested in trustees in the three preceding sections.

This section was Education Law of 1909, § 125, which came from Consolidated School Law, L. 1894, ch. 556, tit. 9, § 5.

§ 467. School taxes and school bonds. 1. A majority of the voters of any school district, present at any annual or special district meeting, duly convened, may authorize such acts and vote such taxes as they shall deem expedient for making additions, alterations, repairs or improvements, to the sites or buildings belonging to the district, or for the purchase of other sites or buildings, or for a change of sites, or for the purchase of land and buildings for agricultural, athletic, playground or social center purposes, or for the erection of new buildings, or for buying apparatus, implements, or fixtures, or for paying the wages of teachers, and the necessary expenses of the school, or for such other purpose relating to the support and welfare of the school as they may, by resolution, approve.

Subd. 1 was amended to read as above by L. 1913, ch. 221.
This subdivision was derived from Education Law of 1909, § 126, subd. 1.

2. On all propositions arising at said meetings involving the expenditure of money, or authorizing the levy of a tax in one

sum or by instalments, the vote thereon shall be by ballot, or ascertained by taking and recording the ayes and noes of such qualified voters attending and voting at such meetings; and they may direct the moneys so voted to be levied in one sum, or by instalments.

This subdivision was Education Law of 1909, § 126, subd. 2.

3. No addition to or change of site or purchase of a new site or tax for the purchase of any new site or structure, or for the purchase of any addition to the site of any schoolhouse, or for the purchase of lands and buildings for agricultural, athletic, playground or social center purposes, or for building any new schoolhouse or for the erection of an addition to any schoolhouse already built, shall be voted at any such meeting in a union free school district unless a notice by the board of education stating that such tax will be proposed, and specifying the object thereof and the amount to be expended therefor, shall have been given in the manner provided herein for the notice of an annual meeting. In a common school district the notice of a special meeting to authorize any of the improvements enumerated in this section shall be given as provided in section one hundred and ninety-seven.

Subd. 3 was amended to read as above by L. 1913, ch. 221. It was derived from Education Law of 1909, § 126, subd. 3.

4. And whenever a tax for any of the objects hereinbefore specified shall be legally voted the board of trustees or board of education shall make out their tax list, and attach their warrant thereto, in the manner provided in article fifteen of this chapter, for the collection of school district taxes, and shall cause such taxes or such instalments to be collected at such times as they shall become due.

5. No vote to raise money shall be rescinded, nor the amount thereof be reduced at any subsequent meeting, unless it be an adjourned meeting or a meeting called by regular and legal notice, which shall specify the proposed action, and at which the vote upon said proposed reduction or rescinding shall be taken by ballot or by taking and recording the ayes and noes of the qualified voters attending and voting thereat.

These subdivisions were Education Law of 1909, § 126, subds. 4 and 5. Section 126 of Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 10 pt., as amended by L. 1895, ch. 273, § 1, and

L. 1896, ch. 264, § 15. The report of the Board of Statutory Consolidation (1907) at page 1157 refers to certain changes made by the board as follows: "That part of this section relating to the issuance of bonds is transferred to section 430 in a separate article on school district bonds. This one section confers upon any school district authority to vote taxes for buildings, sites, betterments, improvements, etc., instead of conferring the same power upon each class of school districts by separate sections. See Consolidated School Law, L. 1894, ch. 556, tit. 8, § 10, as amended by L. 1895, ch. 273, § 1, and L. 1896, ch. 264, § 15; also same, tit. 7, §§ 17 and 18, as amended by L. 1895, ch. 274, § 1, and L. 1904, ch. 281, § 1. Part relating to school sites is in section 119, art. 5, 'School buildings and sites.'"

Section 430 referred to in the first sentence is now covered by section 480. Section 119 is now covered by section 460.

Validity of tax to pay for after-acquired property.— It is no objection to the validity of a tax levied to pay for a schoolhouse that the property had not been acquired when the tax was levied. Williams v. Larkin, (1846) 3 Denio 114.

Tax to pay for alterations previously made.— The taxpayers of a school district have power at a special meeting duly called to vote such taxes as they deem expedient to defray the expenses of alterations theretofore made to a schoolhouse within their district. Burhans v. Union Free School Dist. No. 1, (1897) 24 App. Div. 429, 48 N. Y. S. 702, affirmed (1901) 165 N. Y. 661, 59 N. E. 1119.

Tax to compensate contractor for extra work.— Where a school district and the contractors who did extra work on a school building have arbitrated the claim for compensation for such extra work, and the amount fixed by such arbitration has been paid, the act of the taxpayers in adopting at a special meeting a resolution to compensate the contractors for such extra work is ultra vires and illegal and the levy and collection of such tax cannot be compelled by mandamus at the instance of the contractors. Burhans v. Union Free School Dist. No. 1, (1897) 24 App. Div. 429, 48 N. Y. S. 702, affirmed (1901) 165 N. Y. 661, 59 N. E. 1119.

Taxpayers' right to enjoin purchase of school site.—"When there has been a substantial compliance with the statute and forms of law, and the public interests are not suffering, the board of education will not be enjoined from proceeding with and completing the public improvement undertaken, and which the public needs demand." Lawson v. Lincoln, (1903) 86 App. Div. 217, 83 N. Y. S. 667, affirmed (1904) 178 N. Y. 636, 71 N. E. 1133.

Right of city to question the validity of school tax raised by it.— Where the money to pay for the erection of a school building has been raised by a city "presumably by taxation" it is not in a position to assert in an action to recover on a contract for doing the work "that such funds were procured by it illegally and without authority of law, whatever might have been the rights of a taxpayer in an action properly brought to test that question." Ocorr, etc., Co. v. Little Falls, (1902) 77 App. Div. 592, 79 N. Y. S. 251, affirmed (1904) 178 N. Y. 622, 70 N. E. 1104.

Majority of voters.—"A majority of the qualified voters in attendance, pursuant to legal notice, who actually vote upon the question submitted by answering 'aye' or 'no' as the names of all present are called," is all that is acquired. Smith v. Proctor, (1891) 130 N. Y. 319, 29 N. E. 312, 14 L. R. A. 403.

ARTICLE 17

School District Bonds

§ 480. Issuance of school district bonds. 1. For the purpose of giving effect to the provisions of section four hundred and sixty-seven of this chapter, trustees or boards of education are hereby authorized, whenever a tax shall have been voted to be collected in instalments, for the purpose of building a new schoolhouse, or building an addition to a schoolhouse, or making additions, alterations or improvements to buildings or structures belonging to the district or city, or for the purchase of a new site or for an addition to a site, or for the purchase of land or buildings for agricultural, athletic, playground, or social center purposes, to borrow so much of the sum voted as may be necessary, at a rate of interest not exceeding six per centum, and to issue bonds or other evidences of indebtedness therefor, which shall be a charge upon the district, and be paid at maturity, and which shall not be sold below par.

Subd. 1 was amended to read as above by L. 1913, ch. 221.

2. Notice of the time and place of the sale of such bonds shall be given by the trustees or board of education at least ten days prior thereto by publication twice in two newspapers, if there be two, or in one newspaper if there be but one published in such district. But if no newspaper shall then be published therein, the said notice shall be posted in at least ten of the most public places in said district ten days before the sale.

The subject of this article was covered by article 16 of the Education Law of 1909. That article consisted of section 430. Article 17 of the Education Law of 1909, related to "School Moneys." The report of the Board of Statutory Consolidation (1907) at page 1159 refers to certain changes made by the board as follows: "This is a separate article relating to the issuance of school district bonds. In the Consolidated School Law there are three separate provisions governing the issuance of bonds. Title 7, §§ 17 and 18, provide for the issuance of bonds in common school districts. Title 8, § 9, provides for the issuance of bonds in union free school districts whose boundaries are the same as the boundaries of an incorporated village or city. Title 8, § 10, provides for the issuance of bonds in union free school districts whose boundaries are *not* the same as those of an incorporated village or city. The law is rearranged and collected in this article in one section, without change in present provisions. This section requires the same procedure and the same conditions as the provisions above cited require for each of the three classes of school districts."

3. It shall be the duty of the trustees or the persons having charge of the issue or payment of such indebtedness, to transmit a statement thereof to the clerk of the board of supervisors of the county in which such indebtedness is created, annually, on or before the first day of November.

4. When such bonds are sold by a union free school district whose boundaries are the same as the boundaries of an incorporated village or city, such bonds shall be signed by the president and clerk of the board of education and delivered to the treasurer of such village or city who shall countersign them and give notice of the sale thereof in like manner as is provided for the notice of sale of bonds in subdivision two of this section. The proceeds of the sale of such bonds shall be paid into the treasury of said incorporated village or city, to the credit of the board of education.

5. When such bonds are sold by a common school district the payment or collection of the last instalment shall not be extended beyond twenty years from the time such vote was taken.

6. All of the provisions of the general municipal law relative to the method of the registry of municipal bonds and the conversion of coupon into registered bonds shall apply to bonds issued pursuant to the provisions of this section, except that the duties therein required to be performed by the clerk of a municipal corporation shall be performed by the clerk of the school district.

Subd. 6 was added by L. 1914, ch. 1. This section, with the exception of subd. 6, was Education Law of 1909, § 430, which came from Consolidated School Law, L. 1894, ch. 556, as follows: Subds. 1, 2, 3, from tit. 8, § 10 pt., as amended by L. 1895, ch. 273, § 1, and L. 1896, ch. 264, § 15; subd. 4 from tit. 8, § 9 pt.; subd. 5 from tit. 7, § 18.

Section 480 of the Education Law of 1909 is now covered by section 520.

Legalizing school bonds: see GENERAL MUNICIPAL LAW, § 22 et seq.

What record of proceedings should contain.— The record of the proceedings of a school district authorizing the issue and sale of bonds for the improvement of the school buildings and structures belonging to the district, should contain proof "as to what notice was given of the holding of the special election," and also as to whether the boundaries of the district are coextensive with the boundaries of an incorporated city or village, as these facts are important in determining whether the statutory provisions have been complied with. Op. Atty.-Gen. (1905) 288.

Issue of bonds to pay for existing school building.—A union free school district may lawfully issue bonds to buy a school site with a schoolhouse already erected thereon, and the fact that a very small part of the consideration of such bonds represents property not properly to be regarded as school property will not invalidate the entire issue in the hands of a bona fide purchaser. Oswego City Sav. Bank v. Board of Education, (1902) 70 App. Div. 538, 75 N. Y. S. 417, affirming 35 Misc. 540, 72 N. Y. S. 15, affirmed (1903) 174 N. Y. S. 515, 66 N. E. 1113.

Execution of new bonds in place of unmarketable ones.— Where school district bonds which were originally written upon the typewriter were declared unmarketable by the brokers in that form, the proper officers had power and authority to execute printed ones in their place, the original ones having been destroyed and none of them having been presented for payment. Oswego City Sav. Bank v. Board of Education, (1902) 70 App. Div. 538, 75 N. Y. S. 417, affirming 35 Misc. 540, 72 N. Y. S. 15, affirmed (1903) 174 N. Y. 515, 66 N. E. 1113.

ARTICLE 18

School Moneys

Section 490. When apportion and how applied.
491. Apportionment of moneys appripriated for the support of common schools.
492. Conditions under which cities and districts are entitled to an apportionment from the appropriation for the support of common schools.
493. Apportionment of moneys appropriated to cities, academies, academic departments and school libraries.
494. Manner of certifying and paying apportionment provided for in preceding section.
495. County treasurers to render annual report.
496. Certificate of apportionment by commissioner of education.
497. Moneys apportioned, when and how payable.
498. Apportionment of school moneys by district superintendents.
499. Duty of and payment to supervisor.
500. Power of comptroller to withhold payment of school moneys.
501. Union free school district and city, a school district.
502. Apportionment for support of training classes.

The subject of this article was article 17 of the Education Law of 1909. Article 18 of the Education Law of 1909 was, "Trusts for Schools; Gospel and School Lots." The report of the Board of Statutory Consolidation (1907) contains at page 1159 the following note relating to article 17 now article 18): "All provisions which relate to the appropriation of money for educational purposes and the apportionment thereof when so appropriated, are grouped in this article. Among the former are a number which provide that 'there shall be appropriated annually' certain specified amounts for various educational purposes. It does not follow because one legislature enacts that a certain sum shall be 'appropriated annually,' that succeeding legislatures are bound to make such annual appropriation or in fact any appropriation, unless required so to do by constitutional provision, and, since the passage of L. 1904, ch. 40, commonly called the Unification Act, the legislature has ignored such provisions and has appropriated such sums as it deemed best, without regard to the provisions which required a certain appropriation annually. It follows, therefore, that these provisions although technically alive are practically useless. In regard to the apportionment of the moneys when appropriated the matter in this article is largely inactive and obsolete. Previous to the passage of the Unification Act, moneys appropriated to the Department of Public Instruction were apportioned by that department in conformity with the provisions of the Consolidated School Law, and those

appropriated to the regents were by them apportioned in conformity with the provisions of the University Law and certain special statutes. Owing to the limitations imposed by L. 1904, ch. 664, the act by which it was created, the board has not deemed it advisable to omit these provisions from the Consolidated Education Law, but to follow the direction contained in said act and, 'designate such statutes . . . as in its judgment ought to be repealed with the reason for such repeal . . . and to recommend the enactment of any acts . . . which such repeal may . . . render necessary.' It is therefore suggested that the alternative article 17, which follows this note, be inserted in the law in place of article 17, as therein printed, and that the statutes of which article 17 is made up be inserted in the schedule for repeal. Alternative article 17, which contains eleven sections instead of twenty-nine, is composed of the various provisions relating to the appropriation and apportionment of school moneys contained in the annual appropriation acts of 1905, 1906, 1907, made general and consolidated with certain live provisions of the Consolidated School Law, as appears in footnotes to the sections, with such modifications in these provisions as are required to make the article apply to existing procedure." The "alternative article 17" was the one which was enacted in the Education Law of 1909. The "Unification Act" (L. 1904, ch. 40) referred to in the above note was an act to provide, that the University of the State of New York shall be governed and its corporate powers exercised by eleven regents, and to provide for their election; and to provide for a department of education and the election of a commissioner of education.

§ 490. When apportioned and how applied. The amount annually appropriated by the legislature for the support of common schools shall be apportioned by the commissioner of education on or before the twentieth day of January in each year as hereinafter provided; and all moneys so apportioned shall be applied exclusively to the payment of teachers' salaries.

This section was derived from Education Law of 1909, § 450, the section head reading: *State school moneys and apportionment thereof.*

This section came from Consolidated School Law, L. 1894, ch. 556, tit. 2, §4.

Scope and investment of common school fund: see STATE FINANCE LAW, §§ 80, 81.

§ 491. Apportionment of moneys appropriated for the support of common schools. After setting apart therefrom for a contingent fund not more than ten thousand dollars, the commissioner of education shall apportion the money appropriated for the support of common schools:

1. To each city and to each union school district which has a population of five thousand and which employs a superintendent of schools, eight hundred dollars. This shall be known as a supervision quota.

2. To each district having an assessed valuation of twenty thousand dollars or less, two hundred dollars.

3. To each district having an assessed valuation of forty thousand dollars or less, but exceeding twenty thousand dollars, one hundred and seventy-five dollars.

4. To each district having an assessed valuation of sixty thousand dollars or less, but exceeding forty thousand dollars, and to each Indian reservation for each teacher employed therein for a period of one hundred and sixty days or more, one hundred fifty dollars.

5. To each of the orphan asylums which meet the conditions mentioned in article thirty-five of this chapter, one hundred and twenty-five dollars.

6. To each of the remaining districts and to each of the cities in the state one hundred twenty-five dollars. The apportionment provided for by subdivisions two, three, four, five and six shall be known as district quotas.

7. To each such district, city and orphan asylum for each additional qualified teacher and his successors by whom the common schools have been taught during the period of time required by law, one hundred dollars. The apportionment provided for by this subdivision shall be known as the teacher's quota.

8. To a school district which has failed to maintain school for one hundred sixty days or which has employed an extra teacher for a shorter period than one hundred sixty days such part of a district or teacher's quota as seems to him equitable when the reason for such failure is in his judgment sufficient to warrant such action.

9. To each separate neighborhood such sum as in his opinion it is equitably entitled to receive upon the basis of distribution established by this article.

10. All errors or omissions in the apportionment whether made by the commissioner of education or by the school commissioner shall be corrected by the commissioner of education. Whenever a school district has been apportioned less money than that to which it is entitled the commissioner of education may allot to such district the balance to which it is in his judgment entitled and the same shall be paid from the contingent fund. Whenever a school district has been apportioned more money than that to which it is entitled the commissioner of education may, by an order under his hand, direct such moneys to be paid back into the hands of the county treasurer by him to be credited to the school

fund, or he may deduct such amount from the next apportionment to be made to said district.

11. The commissioner of education may also in his discretion excuse the default of a trustee or a board of education in employing a teacher not legally qualified, legalize the time so taught and authorize the payment of the salary of such teacher.

This section was derived from Education Law of 1909, § 451, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 5, as amended by L. 1902, ch. 316, § 1.

Actions against commissioner to prevent waste.— The commissioner of education is a state officer and consequently does not come within the provisions of a statute authorizing taxpayer's actions against "officers who have acted for or on behalf of any county, town, village, city or municipal corporation in the state, to prevent waste of public funds or injury to public property." Hutchinson v. Skinner, (1897) 21 Misc. 729, 49 N. Y. S. 360.

§ 492. Conditions under which cities and districts are entitled to an apportionment from the appropriation for the support of common schools. 1. The commissioner of education shall make no allotment of a supervision quota to any city or district unless satisfied that such city or district employs a competent superintendent whose time is exclusively devoted to the supervision of the public schools of such city or district; nor shall he make any allotment to any district in the first instance without first causing an enumeration of the inhabitants to be made which shall show the population thereof to be at least five thousand, the expense of such enumeration, as certified by said commissioner, shall be paid by the district in whose interest it is made. The population shown by the last state or federal census or village enumeration may be accepted by said commissioner whenever the village and school district boundaries coincide.

2. No district shall be entitled to any portion of such school moneys on such apportionment unless the report of the trustees for the preceding school year shall show that a common school was supported in the district and taught by a qualified teacher or by successive qualified teachers for at least one hundred and eighty[1] days, inclusive of legal holidays that may have occurred during the term of said school and exclusive of Saturdays.

3.[2] No Saturday shall be counted as part of said one hundred and eighty days of school and no school shall be in session on a

1 Formerly "sixty."
2 Formerly subd. 4. No subd 3 in original act.

legal holiday, except general election day, Washington's birthday and Lincoln's birthday. A deficiency not exceeding six days during any school year caused by a teacher's attendance upon teachers' conferences held by district superintendents of schools within a county, shall be excused by the commissioner of education. In common school districts the term of school shall begin each year on the first Tuesday of September.

Amended to read as above by L. 1913, ch. 511. The changes are indicted in the footnotes.

This section was derived from Education Law of 1909, § 452. It came from the following sources: Subd. 1 from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 5, as amended by L. 1902, ch. 316, § 1; subd. 2 from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 15; subd. 3 from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 6, as amended by L. 1896, ch. 264, § 1; L. 1902, ch. 316, § 2, and L. 1906, ch. 698, § 1.

§ 493. Apportionment of moneys appropriated to cities, academies, academic departments and school libraries. The commissioner of education shall apportion the money annually appropriated for the support of cities, academies, academic departments and school libraries in accordance with regulations established or to be established by him as follows:

1. To each city, union school district and nonsectarian academy maintaining an academic department, a quota of one hundred dollars for each such academic department maintained therein. This apportionment shall be known as the academic quota.

2. To each nonsectarian private academy an allowance equal to the amount raised from local sources but not to exceed two hundred fifty dollars annually for approved books, reproductions of standard works of art,[1] and apparatus.

3. To each city an allowance equal to the amount raised from local sources but not to exceed eighteen dollars and two dollars additional for each duly licensed teacher employed therein for the legal term, and two hundred fifty dollars for each academic department maintained by it for approved books, reproductions of standard works of art[1] and apparatus.

4. To each union free school district maintaining an academic department an allowance equal to the amount raised from local sources, but not to exceed two hundred sixty-eight dollars annually and two dollars additional for each teacher employed in said dis-

[1] Words "reproductions of standard works of art" substituted for words "standard pictures."

trict for the legal term for approved books, reproductions of standard works of art[1] and apparatus.

5. To all other school districts an allowance equal to the amount raised from local sources but not to exceed eighteen dollars annually and two dollars additional for each duly licensed teacher employed in said district for the legal term for approved books, reproductions of standard works of art,[2] geographical maps, [3]a globe and school apparatus.[4]

6. To each city and union school district maintaining an academic department, twenty dollars per year for at least thirty-two weeks' instruction or a proportionate amount if for eight weeks or more for each nonresident pupil attending the academic department of such school from districts not maintaining such academic departments and who shall be admitted to such academic departments without other expense for tuition than that provided herein. But pupils residing in districts not maintaining a four-year curriculum may be included in this apportionment after having completed the course of study prescribed for the school in the district in which they reside. In the apportionment to cities and union school districts[5] whose customary charge for nonresident pupils is greater than the sum provided by this subdivision, the commissioner of education may permit the sum so apportioned to be applied upon such customary charge for such nonresident pupils, provided the balance of such customary charge shall be assumed by the school district in which such nonresident pupil is resident, and the payment thereof shall have been provided for at a school district meeting held in such district[6] or the said balance shall have been paid by the parents or guardians of such pupils to the proper officer of the city or district maintaining the high school or academic department attended by such pupils.

7. After the payment of the allowances herein provided for the balance shall be divided among the several cities, school districts and academies maintaining academic departments on the basis of aggregate days' attendance of academic pupils therein.

8. The commissioner shall set aside at the beginning of the

1 Words "reproductions of standard works of art" substituted for words "standard pictures."

2 Words "reproductions of standard works of art," new.

3 Word "and" omitted.

4 Words "and school apparatus," new.

5 "Union school districts," added.

6 Remainder of sentence new.

fiscal year a sum which in his opinion will be sufficient to pay the allowances for books and apparatus herein provided before making the other apportionments as directed by this article. The allowance for books and apparatus shall be apportioned and paid as often during each year as the commissioner may determine. All other apportionments above provided for shall be made so far as possible during the month of October each year on the basis of the reports of the previous year.

9. To entitle a city, academy, academic department or school library to an apportionment from this fund the school authorities having control must render a satisfactory report for the preceding year to the commissioner of education before the twentieth day of September in each year unless such neglect is excused by the commissioner for sufficient reason. They must also have complied with all regents' laws and ordinances during the preceding academic year.

Subds. 2–5 were amended to read as above by. L. 1914, ch. 216. The changes are indicated in the footnotes. Subd. 6 was amended to read as above by L. 1912, ch. 276; L. 1913, ch. 399; L. 1915, ch. 214. This section was derived from Education Law of 1909, § 453, which came from provisions relating to the appropriation and apportionment of school moneys contained in L. 1905, ch. 699; L. 1906, ch. 683, and L. 1907, ch. 577, made general and consolidated with the live provisions of the Consolidated School Law, L. 1894, ch. 556, which related to the subject matter of this section. See note following the schedule of sections at the beginning of this article.

Grants to found and maintain public library: see REAL PROPERTY LAW, § 115.

Apportionments to districts contracting for education of its children.—Where a school district which does not conduct an academic department, makes a contract with another district for the education of its children of school age under section 580 of this act, the state should contribute under subd. 6 of this section for each pupil from such district attending such academic department, since a fair construction requires that subd. 1 of section 580 be read to mean that the district may, instead of maintaining a home school, contract for all the children it has previously been educating. Op. Atty.-Gen. (1913) 666.

Maintenance of normal schools out of common school fund.—An act providing for the application of the common school funds to the support of normal schools was held unconstitutional under section 1 of article 9 of the constitution of 1846 which declared "that the capital of the common school fund shall be kept inviolate, and that its revenues shall be applied to the support of common schools" inasmuch as normal schools were not "open to all, but only to such as may be selected at times and in a manner to be prescribed by the superintendent of public instruction." Gordon v. Cornes, (1872) 47 N. Y. 608.

§ 494. Manner of certifying and paying apportionment provided for in preceding section. Payment from this fund shall be made to the county treasurer of each county for all schools

located in such county, by the state treasurer on the warrant of the comptroller or the certificate of the commissioner of education. The commissioner of education immediately after making an apportionment shall certify, or cause to be certified,[1] to the county treasurer of every county included in such apportionment, excepting those counties included within the territory of the city of New York, with respect to his county, the name of each academy, the number of each school district and the town in which it is situated and the name of each city to which money has been allotted and the amount allotted to each. The county treasurer shall, upon the receipt of such certificate and payment from the state treasurer, pay to the treasurer, if there be one, otherwise to the disbursing officer or collector of each school district, academy and city named in the certificate of the commissioner of education, the amount to which said district, academy or city is entitled as shown by such certificate. Any apportionment which shall be made to the city of New York shall be certified and paid to the chamberlain of the city of New York, and any apportionment which shall be made to any private academy situated within the territory of the city of New York, shall be certified and paid directly to the disbursing officer of the academy to which the apportionment is made.

Amended to read as above by L. 1912, ch. 77. The change is indicated in the footnote.

This section was derived from Education Law of 1909, § 454, which had its source in the provisions referred to in the note to section 493, supra.

§ 495. County treasurers to render annual report. The county treasurers of the state shall, upon the first day of October of each year and at such other times as the commissioner of education may require, make a report for the preceding year to the commissioner of education, showing the amount of money received by them from this fund and the school districts, cities or academies to which such money has been paid and the amount paid to each, and the amount, if any, remaining in their hands unclaimed by any school district, city or academy together with any other fact relative to the disbursement of this fund which said commissioner may require.

This section was derived from Education Law of 1909, § 455, which had its source in the provisions referred to in the note to section 493, supra.

[1] Words "or cause to be certified," new.

§ 496. Certificate of apportionment by commissioner of education. As soon as possible after the making of any annual or general apportionment, the commissioner of education shall certify it, or cause it to be certified,[1] to the county clerk, county treasurer, district superintendents,[2] and city treasurer or chamberlain, in every county in the state; and if it be a supplemental apportionment, then to the county clerk, county treasurer and district superintendents[2] of the county in which the school-house of the district concerned is situated.

Amended to read as above by L. 1912, ch. 77. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 456, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 11.

§ 497. Moneys apportioned, when and how[3] payable. At least one-half of the moneys so annually apportioned by the commissioner of education shall be payable on or before the first day of March and the remaining part of such moneys on or before the fifteenth day of May, in each year, next after such apportionment, to the treasurers of the several counties and the chamberlain of the city of New York, respectively; and the said treasurers and the chamberlain shall apply for and receive the same as soon as payable. [4]The county treasurer shall pay to the city treasurer of each city and the treasurer of each union free school district having a population of five thousand or more inhabitants and in which a superintendent of schools has been appointed, situated within his county, all school moneys apportioned to such city or district as provided by sections four hundred and ninety-one, four hundred and ninety-two and six hundred and four of this chapter.

Amended to read as above by L. 1914, ch. 52. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 457, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 12, as amended by L. 1904, ch. 166, § 1.

§ 498. Apportionment of school moneys by district superintendents. The district superintendent of schools shall, on or before the fifteenth day of February in each year, apportion the supervision, district and teachers' quotas to the several districts entitled

1 Words "or cause it to be certified," new.
2 Formerly read "school commissioners." See L. 1910, ch. 607.
3 Words "and how," new.
4 Remainder of section new.

thereto, within his supervisory district, as shown by the certificate of the commissioner of education to the said district superintendent. He shall procure from the supervisors of the towns in his district a transcript showing the unexpended moneys in their hands applicable to the payment of teachers' salaries. The amounts in each supervisor's hands shall be charged as a partial payment of the sums apportioned to the town teachers' salaries.

He shall procure from the county treasurer a full list and statement of all payments to him of moneys for or on account of fines and penalties, or accruing from any other source, for the benefit of schools and of the towns or districts for whose benefit the same were received. Such of said moneys as belong to a particular district, he shall set apart and credit to it; and such as belong to the schools of a town he shall set apart and credit to the schools in that town, and shall apportion them together with such as belong to the schools of the county as hereinafter provided for the payment of teachers' salaries.

He shall sign, in duplicate, a certificate, showing the amounts apportioned and set apart to each school district and part of a district, and the towns in which they were situated, and shall forthwith deliver one of said duplicates to the treasurer of the county and transmit the other to the commissioner of education.

He shall certify to the supervisor of each town, in his supervisory district the amount of school moneys apportioned to each district or part of a district of his town for teachers' wages.

Amended to read as above by L. 1913, ch. 130. This section was derived from Education Law of 1909, § 458, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 13, as amended by L. 1896, ch. 264, § 2.

§ 499. Duty of and payment to supervisor. On receiving the certificate of the school commissioners, each supervisor shall forthwith make a copy thereof for his own use, and deposit the original in the office of the clerk of his town; and the moneys so apportioned to his town shall be paid to him immediately on his compliance with the requirements of section three hundred and sixty-three of this chapter.

This section was Education Law of 1909, § 459, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 16.

§ 500. Power of comptroller to withhold payment of school moneys. The comptroller may withhold the payment of any

moneys to which any county may be entitled from the appropriation of the incomes of the school fund and the United States deposit fund for the support of common schools, until satisfactory evidence shall be furnished to him that all moneys required by law to be raised by taxation upon such county, for the support of schools throughout the state, have been collected and paid or accounted for to the state treasurer.

This section was Education Law of 1909, § 460, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 3, as amended by L. 1902, ch. 393, § 1.
Section 500 of the Education Law of 1909 is now covered by section 850.

§ 501. Union free school district and city, a school district. Every union free school district and every city having an organized city system of schools shall, for all the purposes of the apportionment, distribution, payment and withholding of school moneys, be regarded and recognized as a school district.

This section was Education Law of 1909, § 461, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 12. Section 501 of the Education Law of 1909 is now covered by section 851.

§ 502. Apportionment for support of training classes. The commissioner of education shall apportion the money annually appropriated for the support of training of teachers as follows:

1. To each academy and union free school district which has maintained a training class in accordance with the provisions of article thirty-one of this chapter and with the regulations prescribed by the commissioner of education, the sum of seven hundred dollars.

2. The balance of the money appropriated for such purpose shall be apportioned to the cities of the state which maintain training schools in accordance with the provisions of articles twenty and thirty-one of this chapter and with the regulations prescribed by the commissioner of education, ratably according to the aggregate attendance of the pupils regularly admitted to such training schools.

This section was Education Law of 1909, § 462, as added by L. 1909, ch. 406. Section 462 of the Education Law of 1909 is now covered by section 852.

ARTICLE 19*

TRUSTS FOR SCHOOLS; GOSPEL AND SCHOOL LOTS

Section 520. Property to be held in trust for common schools.
521. Control and supervision of trusts for common schools.
522. Report of trusts to commissioner of education.
523. Report of supervisor regarding gospel or school lots.
524. Apportionment of gospel funds.
525. Authorization of apportionment of gospel funds.
526. Payment of apportionment of gospel funds.
527. Bond required of collector or treasurer.
528. Application of moneys.

§ 520. Property to be held in trust for common schools. Real and personal estate may be granted, conveyed, devised, bequeathed and given in trust and in perpetuity or otherwise, to the state, or to the regents or to the commissioner of education for the support or benefit of the common schools, within the state, or within any part or portion of it, or of any particular common schools within it; and to any county, or the school commissioners of any county, or to any city or any board of officers thereof, or to any school commissioner district or its commissioner, or to any town, or supervisor of a town, or to any school district or its trustees, for the support and benefit of common schools within such county, city, school commissioner district, town or school district, or within any part or portion thereof respectively, or for the support and benefit of any particular common schools therein. No such grant, conveyance, devise or bequest shall be held void for the want of a named or competent trustee or donee, but where no trustee or donee, or an incompetent one is named, the title and trust shall vest in the people of the state, subject to its acceptance by the legislature, but such acceptance shall be presumed.

This section was Education Law of 1909, § 480, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 19.

Grants and devises of real property for educational purposes: see REAL PROPERTY LAW, § 114.

Grants and bequests of personal property for school purposes: see PERSONAL PROPERTY LAW, § 13.

* The subject of this article was article 18 of the Education Law of 1909. Article 19 of the Education Law of 1909 was, "Fines, Penalties, Forfeitures and Costs."

Devises and bequests to state in trust for schools: see STATE FINANCE LAW, §§ 39, 40.

Bequests for support or establishment of free or public schools: see note 8 Ann. Cas. 925.

Validity of bequests.—A bequest of three hundred dollars "to school district No. 1" with a direction "that the same shall be forever loaned by the town officers mentioned . . . and the interest thereon to be annually paid by such officers to the trustees of said school district to be by them applied towards the support of the said school in said district," is valid. Iseman v. Myres, (1882) 26 Hun 651. And a gift of one-half of the testator's residuary estate to her executors "in trust, nevertheless, to be used and devoted by them to the establishment of a school for girls in the town of North Salem" was held valid. Butterworth v. Keeler, (1915) 169 App. Div. 136, 154 N. Y. S. 744. So, a bequest of funds to "school district number 4 (four) of the said town of North Hempstead" was valid under this section, and a direction that the income thereof "be used and applied for the benefit of the school of said district and the promotion of the cause of public education therein" was equivalent to a direction "that it be used for the support and benefit of all the common schools" of the district. The further provision that "the care and management of the fund so bequeathed shall devolve upon more than one person and that the inhabitants of said school district shall either under existing laws or under special enactment by the Legislature resolve to have and shall elect three trustees for said district, and that such three trustees when so elected, and their successors in office, shall take, hold and manage said fund for the purposes for which I have given the same as hereinabove stated," did not cause a "suspension of the gift" inasmuch as there were in fact three trustees in the district at the time of the testator's death. Matter of Bogart, (1899) 43 App. Div. 582, 60 N. Y. S. 496.

Acceptance of money given in lieu of former gift.— Where a schoolhouse erected from a fund contributed by the inhabitants of a certain neighborhood for that purpose, was destroyed in time of war, and Congress subsequently passed an act to remunerate those whose property had been destroyed in the war, the school district which had in the meantime been created to embrace that neighborhood was entitled to receive the money payable pursuant to the Act of Congress rather than the donors of the original fund. Potter v. Chapin, (1837) 6 Paige 639.

Determination of capacity to accept bequest.— Where a bequest was made contingent upon the death of the testator's son who had a life interest in the fund, the legal capacity of the donee to accept the bequest is to be ascertained as of the time of the termination of the life interest and the bequest is valid if the donee has capacity to take at that time. In re Durand, (1907) 56 Misc. 235, 107 N. Y. S. 393.

Taxation of bequest to library corporation.—A bequest to a library corporation incorporated by the regents of the state of New York and receiving state aid is not exempt from the transfer tax as being a bequest to an "educational institution. Matter of Francis, (1907) 121 App. Div. 129, 105 N. Y. S. 643, affirmed (1907) 189 N. Y. 554, 82 N. E. 1126.

§ 521. Control and supervision of trusts for common schools. The legislature may control and regulate the execution of all such trusts; and the commissioner of education shall supervise and advise the trustees, and hold them to a regular accounting for the trust property and its income and interest at such times,

in such forms, and with such authentications, as he shall, from time to time, prescribe.

This section was Education Law of 1909, § 481, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 20.

§ 522. Report of trusts to commissioner of education. The common council of every city, the board of supervisors of every county, the trustees of every village, the supervisor of every town, the trustees of every school district, and every other officer or person who shall be thereto required by the commissioner of education shall report to him whether any, and if any, what trusts are held by them respectively, or by any other body, officer or person to their information or belief for school purposes, and shall transmit, therewith, an authenticated copy of every will, conveyance, instrument or paper embodying or creating the trust; and shall, in like manner, forthwith report to him the creation and terms of every such trust subsequently created.

This section was Education Law of 1909, § 482, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 21.

§ 523. Report of supervisor regarding gospel or school lots. Every supervisor of a town shall report to the commissioner of education whether there be, within the town, any gospel or school lot, and, if any, shall describe the same, and state to what use, if any, it is put by the town; and whether it be leased, and, if so, to whom, for what term and upon what rents; and whether the town holds or is entitled to any land, moneys or securities arising from any sale of such gospel or school lot, and the investment of the proceeds thereof, or of the rents and income of such lots and investments, and shall report a full statement and account of such lands, moneys and securities.

This section was Education Law of 1909, § 483, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 22.

§ 524. Apportionment of gospel funds. It shall be lawful for the supervisor of any town having money arising from the sale of gospel lands, and known as gospel funds, to apportion such funds among the several school districts of his respective town as hereinafter provided.

This section was Education Law of 1909, § 484, which came from L. 1895, ch. 232, § 1.

§ 525. Authorization of apportionment of gospel funds. 1. The town board of any town having a gospel fund of five hundred dollars or less may authorize the supervisor of the town to apportion such fund among the several school districts of the town.

2. The voters of any town having a gospel fund of more than five hundred dollars may at any regular or special town meeting authorize the supervisor of the town to apportion such fund among the several school districts of the town.

This section was derived from Education Law of 1909, § 485, the section head being: *Manner of apportionment of gospel funds.*
This section came from L. 1895, ch. 232, § 1.

§ 526. Payment of apportionment of gospel funds. When such apportionment is authorized the supervisor shall pay to the collector, or if the district has a treasurer to the treasurer, of the several school districts of his town its pro rata share according to the aggregate school attendance of each school district in the preceding year.

This section was derived from Education Law of 1909, § 486, which came from L. 1895, ch. 232, § 4.

§ 527. Bond required of collector or treasurer. The collector or the treasurer if the district has a treasurer, of each of such school districts shall execute and file with the supervisor of such town a bond of twice the amount of such apportionment with sufficient sureties, to be approved by such supervisor.

This section was derived from Education Law of 1909, § 487, the section head being: *Bond required of trustees.*
This section came from L. 1895, ch. 232, § 5.

§ 528. Application of moneys. Such moneys shall be held by such collector or treasurer and paid upon the written order of the trustee of the district for such purposes as the annual or a special meeting of the district shall direct.

This section was derived from Education Law of 1909, § 488, the section head being: *Application of moneys by trustees.*
This section came from L. 1895, ch. 232, § 6.

ARTICLE 20*

Teachers and Pupils

Section 550. Qualification of teachers.
551. Minimum qualifications of teachers in primary and grammar schools.
552. Regulations governing certification of teachers.
553. Commissioner of education to issue certificates.
554. Endorsement of foreign certificates and diplomas.
555. Certification of teachers by local authorities.
556. Revocation of certificate by school commissioner.
557. Unqualified teachers shall not be paid from school moneys.
558. Penalty for payment of unqualified teacher.
559. Teachers responsible for record books.
560. Verification of school register.
561. Contract with teacher.
562. Penalty for †teachers' failure to complete contract.
563. Contract when teacher is related to trustee or member of board.
564. Individual liability of trustee.
565. Dismissal of teacher.
566. Teacher's salary payable as often as monthly.
567. Common schools free to resident pupils; tuition from nonresident pupils.

§ 550. Qualification of teachers. No person shall be employed or authorized to teach in the public schools of the state who is:

1. Under the age of eighteen years; and,

2. Not in possession of a teacher's certificate issued under the authority of this chapter or a diploma issued on the completion of a course in a state normal school of this state or in the state normal college.

This section was derived from Education Law of 1909, § 550. It came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 38, as amended by L.

* The subject of this article was article 21 of the Education Law of 1909. Article 20 of the Education Law of 1909 was, "Compulsory Education."

† So in original.

1896, ch. 264, § 6. The report of the Board of Statutory Consolidation (1907) at page 1167 refers to the substance of section 550 as follows: "This section defines a legally qualified teacher and under other provisions of the law city superintendents are authorized to issue certificates."

Exemption of teachers from jury duty: see JUDICIARY LAW, §§ **546, 635,** 720.

Reasonable correction of scholar: see PENAL LAW, § 246, subd. 4.

Infliction by school teacher of corporal punishment upon pupils: see note 12 Ann. Cas. 353. *Punishment, restraint and correction of pupils:* see note 65 L. R. A. (N. S.) 891.

Review by court of regulations of school boards for control and discipline of pupils: see notes 6 Ann. Cas. 998; 13 Ann. Cas. 333.

Liability of public school district or corporation for negligence of teacher toward pupils: see note Ann. Cas. 1912A 337.

Teaching religious doctrines in public schools: see notes 2 Ann. Cas. 522; 19 Ann. Cas. 234; Ann. Cas. 1916A, 312.

Religious exercises or instruction in public schools: see note L. R. A. 1915D 941.

Wearing of sectarian religious garb by teacher in public school: see notes 6 Ann. Cas. 435; Ann. Cas. 1912A 428.

Power of legislature to regulate right to teach in public schools.—"While rights which have been vested under and by virtue of a statute cannot be disturbed by a subsequent statute, the right to teach in the public schools is not vested and is always subject to regulation at the hands of the legislature." Hence, the general statutes which existed at the time of the adoption of the Greater New York charter do not invalidate or render inoperative charter provisions alleged to be inconsistent with them. Stetson v. Board of Education, (1916) 218 N. Y. 301, 112 N. E. 1045.

Power to employ unlicensed teacher.—Under the statute of 1864 it was held that the trustees had no power to employ an unlicensed teacher. Gillis v. Space, (1872) 63 Barb. 177; Blandon v. Moses, (1863) 29 Hun 606. See § 561.

Effect of obtaining certificate of qualification after execution of contract.—Where the plaintiff at the date of the contract had an unexpired certificate of qualification from the school commissioner of another county, and after the contract and about ten days before the commencement of his services, obtained from the commissioner of the district in which the contract was made his indorsement upon the certificate as valid within his district, it was held that, at the time the contract was made, the plaintiff was not a duly licensed teacher for the district, and, therefore, the trustee had no authority to make the contract. The court said: "The plaintiff must rest upon the force of the contract when made, and it was then invalid. It would need the assent, express or implied, of both parties after the disqualification of both parties was removed to give it validity, and that assent is absent." O'Connor v. Francis, (1899) 42 App. Div. 375, 59 N. Y. S. 28.

Status of teacher in elementary school in New York city.—The status of a teacher in a grade in the elementary school of New York city is created by the formal action of the board of superintendents and of the board of education, either by original appointment or by promotion. (Revised Charter, § 1090.) Hirschfield v. Board of Education, (1915) 89 Misc. 115, 152 N. Y. S. 870, and see infra, § 533.

§ 551. Minimum qualifications of teachers in primary and grammar schools. No person shall hereafter be employed or licensed to teach in the primary and grammar schools of any city or school district authorized by law to employ a superintendent of

schools who has not had successful experience in teaching for at least three years, or in lieu thereof has not completed:

1. A course in one of the state normal schools of this state prescribed by the commissioner of education.

2. An examination for and received a life state certificate issued in this state by a superintendent of public instruction or the commissioner of education.

3. A course of study in a high school or academy of not less than three years approved by the commissioner of education or from some institution of learning of equal or higher rank approved by the same authority, and who subsequently to the completion of such course has not graduated from a school for the professional training of teachers having a course of not less than two years approved by the commissioner of education or its equivalent.

This section was derived from Education Law of 1909, § 551, which came from L. 1895, ch. 1031, § 4.

§ 552. Regulations governing certification of teachers. The commissioner of education shall prescribe, subject to approval by the regents, regulations governing the examination and certification of teachers employed in all public schools of the state.

Section 552 of the Education Law of 1909 is now covered by sections 553 and 554.

§ 553. Commissioner of education to issue certificates. The commissioner of education may issue:

1. A life state certificate upon examinations only which shall entitle its holder to teach for life in the public schools of the state without further examination.

2. Such other certificates as regents general rules shall prescribe.

3. A temporary license limited to a school district, school commissioner district or city for a period not to exceed one year.

This section was derived from Education Law of 1909, § 552, which came from Consolidated School Law, L. 1894, ch. 556, tit. 1, § 10.

Section 553 of the Education Law of 1909 is now covered by section 555.

Determination of teacher's status in New York city.— In the city of Greater New York "the status of a person as a teacher in a grade is created by the formal action of the board of education, either by an original appointment or by a promotion" and the mere fact that he may have taught in higher grades for a couple of years does "not alter his status as a teacher in the lower grades or constitute an appointment or promotion of him to the higher

grade." Hirschfield v. Board of Education, (1915) 89 Misc. 115, 152 N. Y. S. 870. See also Stetson v. Board of Education, (1914) 165 App. Div. 476, 150 N. Y. S. 847; Hazen v. Board of Education, (1908) 127 App. Div. 235, 111 N. Y. S. 337; Hoefling v. Board of Education, (1907) 120 App. Div. 545, 104 N. Y. S. 941.

§ 554. Endorsement of foreign certificates and diplomas. The commissioner of education may in his discretion endorse:

1. A diploma issued by a normal school of another state.

2. A certificate issued by the chief educational officer or state board of another state.

Such endorsement confers on the holder of such diploma or certificate the privileges conferred by law on the holder of a normal school diploma or state certificate issued in this state.

This section was derived from Education Law of 1909, § 552, the text of which together with its source is given in the note to section 553.

Section 554 of the Education Law of 1909 is now covered by section 556.

§ 555. Certification of teachers by local authorities. A school commissioner, a city superintendent of schools or such other authority of a city as may be designated by a special act or the city charter may issue such certificate as may be authorized by the regents general rules or by such special act or city charter.

This section was derived from Education Law of 1909, § 553, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 13, subd. 5.

Section 555 of the Education Law of 1909 is now covered by section 557.

§ 556. Revocation of certificate by school commissioner. A school commissioner shall examine any charge affecting the moral character of any teacher within his district, first giving such teacher reasonable notice of the charge, and an opportunity to defend himself therefrom; and if he find the charge sustained, he shall annul the teacher's certificate, by whomsoever granted, and declare him unfit to teach; and if the teacher holds a certificate of the commissioner of education or of a former superintendent of public instruction or a diploma of a state normal school, he shall notify the commissioner of education forthwith of such annulment and declaration.

This section was Education Law of 1909, § 554, which came from Consolidated School Law, L. 1894, ch. 556, tit. 5, § 13, subd. 6.

Section 556 of the Education Law of 1909 is now covered by section 558.

Right of school teacher to appeal to courts to interfere with revocation of license: see note 14 Ann. Cas. 298.

Communications to commissioner of education as privileged.— Communications to a school commissioner charging a teacher of the district with unchastity and the use of obscene and profane language, made by a resident of the district in good faith and for a proper purpose, are privileged in an action for slander brought against him by the teacher. Decker v. Gaylord, (1885) 35 Hun 584.

§ 557. Unqualified teachers shall not be paid from school moneys. No part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary, or any part thereof, be collected by a district tax except as provided in section four hundred and ninety-one of this chapter.

This section was Education Law of 1909, § 555, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 39.

Section 557 of the Education Law of 1909 is now covered by section 559.

License as evidence of teacher's qualifications.— It seems that the license issued by a district superintendent pursuant to this section is prima facie evidence only that the holder thereof is qualified to teach in a public school. Gillis v. Space, (1872) 63 Barb. 177.

Effect of the section.— This section does not in itself prohibit the employment of an unqualified teacher although his salary cannot be paid out of the public moneys or collected by tax. Ellis v. Sharp, (1886) 42 Hun 179, 4 N. Y. St. Rep. 687. See §§ 550 and 561.

Presumption as to the teacher's qualifications.— On a demurrer to the complaint in an action brought by a teacher against the trustee of a school district to recover for services "it must be assumed that the plaintiff was a qualified teacher, and that the services were solicited and contracted for, by and in behalf of the defendant, by a person authorized and empowered by law." Ellis v. Sharp, (1886) 42 Hun 179, 4 N. Y. St. Rep. 687.

§ 558. Penalty for payment of unqualified teacher. Any trustee who applies, or directs, or consents to the application of any district money to the payment of an unqualified teacher's salary, thereby commits a misdemeanor; and any fine imposed upon him therefor shall be for the benefit of the common schools of the district.

This section was Education Law of 1909, § 556, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 40.

Section 558 of the Education Law of 1909 is now covered by section 560.

§ 559. Teachers responsible for record books. Teachers shall keep, prepare and enter in the books provided for that purpose, the school lists and accounts of attendance herein mentioned, and shall be responsible for their safekeeping and delivery to the clerk of the district at the close of their engagements or terms.

This section was Education Law of 1909, § 557, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 41.

Section 559 of the Education Law of 1909 was omitted in the enactment of Education Law of 1910 (ch. 140).

§ 560. Verification of school register. 1. Each teacher shall, by his oath or affirmation, verify his entries in the school register provided by the education department, and the entries shall consitute the school lists from which the average daily attendance shall be determined. Such oath or affirmation may be taken by the district clerk or trustee, but without charge.

2. A teacher shall not be entitled to his salary for the last month of a term until he shall have so made and verified such entries and the trustees shall not draw on the supervisor, collector or treasurer for any portion of his salary for such month until such oath or affirmation shall have been made.

This section was Education Law of 1909, § 558, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 53 pt. The report of the Board of Statutory Consolidation (1907) at page 1167 refers to certain changes made by the board as follows: "New matter in regard to the school register added for the reason that the department now furnishes the register in order to have a uniform system of keeping the record. New matter 'for the last month of a term' added for the reason that Consolidated School Law, tit. 8, § 15 (§ 567 hereof), requires that teachers shall be paid monthly. Provision inserted allowing verification before the trustee, as well as the clerk, because school commissioners and trustees possess the general power to administer oaths."

Section 560 of the Education Law of 1909 was omitted in the enactment of Education Law of 1910 (ch. 140).

§ 561. Contract with teacher. 1. All trustees of school districts or boards of education who shall employ any teacher to teach shall, at the time of such employment, make and deliver to such teacher, or cause to be made and delivered, a contract in writing, signed by them, or by some person duly authorized to represent them in the premises, in which the details of the agreement between the parties, and particularly the length of the term of employment, the amount of compensation and the time when such compensation shall be due and payable shall be clearly and definitely set forth.

2. No contract for the employment of a teacher in a district having three or more trustees shall be made for more than one year in advance or for a shorter time than ten weeks unless for the purpose of filling out an unexpired term of school.

3. No contract for the employment of a teacher in a district having a sole trustee shall be made to extend beyond the date of the expiration of the term of office of such trustee. A sole trustee of a school district shall have full power and authority to contract with teachers for the term for which he has been elected

any time after the date of the annual meeting at which such trustee was elected.

4. Nor shall any trustee contract with any teacher whose certificate of qualifications shall not cover a period at least as long as that covered by the contract of service.

Amended to read as above by L. 1910, ch. 442.

The amendment materially changed the former section, by substituting new subdivisions 2, 3 and 4 for former subdivision 2.

This section was derived from Education Law of 1909, § 562, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 47, subds. 9, 10 pt., as amended by L. 1896, ch. 264, § 7. The report of the Board of Statutory Consolidation (1907) at page 1168 refers to certain changes made by the board as follows: "The Consolidated School Law contains separate provisions defining the powers of a board of trustees in a common school district, in relation to contracting with and employing teachers (tit. 7, § 47, subds. 9, 10), and in relation to boards of education performing the same duties. (tit. 8, § 15, subd. 11.) There is much unnecessary repetition of language involving the same provisions, and these sections are a rearrangement and simplification of this matter with no change of substance."

Section 561 of the Education Law of 1909 was omitted in the enactment of Education Law of 1910 (ch. 140).

Right of school teacher to compensation as dependent on validity of contract or appointment: see note Ann. Cas. 1913C 372.

Right to make reduction from compensation of school teacher: see note Ann. Cas. 1914D 141.

Extent of trustee's authority.— Under the Act of 1864 the trustee's power to contract with and employ teachers was not limited to an employment during his term of office, but a contract with a teacher for a period extending beyond his term, if made in good faith, without fraud or collusion, and for a reasonable period, was valid and binding upon his successor. Wait v. Ray, (1876) 67 N. Y. 36.

Action on teacher's contract.— In the city of New York an action to recover the wages of a school teacher employed by the board of education is properly brought against such board of education and not against the city, where the sole object and purpose of the action is to establish the validity of a disputed claim and to liquidate the amount thereof. Gunnison v. Board of Education, (1903) 176 N. Y. 11, 68 N. E. 106; Op. Atty.-Gen. (1912) 145. See also Washington Academy v. Cruikshank, (1904) 43 Misc. 197, 88 N. Y. S. 330.

Where the verified complaint in an action brought in a justice's court alleged a cause of action against the board of education of a union free school district for damages for the breach of a contract by which the plaintiff was employed as a teacher and in the title three individuals were named as composing such board but the original summons was directed to and served upon only two of them as individuals, a judgment rendered against the three members of the board individually was reversed as erroneously entered and the plaintiff was remitted to a new suit, since the appellate court had no power to substitute the board of education as a defendant in the place of the individuals composing it, even if it were conceded that the plaintiff was entitled to judgment for the amount claimed. Reynolds v. Foster, (1910) 66 Misc. 133, 123 N. Y. S. 273.

Sufficiency of allegations.— In an action brought by a teacher against a school district trustee to recover on his contract for services, an allegation that the defendant "has neglected and refused to pay" is in effect "equivalent

to an averment that the defendant had refused to give a warrant upon the supervisor, and a refusal to collect by tax of the district" as required by statute. Ellis v. Sharp, (1886) 42 Hun 179, 4 N. Y. St. Rep. 687.

§ 562. Penalty for teacher's failure to complete contract. Any failure on the part of a teacher to complete an agreement to teach a term of school without good reason therefor shall be deemed sufficient ground for the revocation of the teacher's certificate.

This section was Education Law of 1909, § 563, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 49, subd. 9 pt., as amended by L. 1896, ch. 264, § 7. See also statement of Board of Statutory Consolidation in note following section 561, supra.

Section 562 of the Education Law of 1909 is now covered by section 561.

§ 563. Contract when teacher is related to trustee or member of board. 1. No person who is related to any trustee by blood or marriage shall be employed as a teacher, except with the approval of two-thirds of the voters of such district present and voting upon the question at an annual or special meeting of the district.

2. No person who is related by blood or marriage to any member of a board of education shall be employed as a teacher by such board, except upon the consent of two-thirds of the members thereof to be determined at a board meeting and to be entered upon the proceedings of the board:

This section was Education Law of 1909, § 564.

Subdivision 1 of section 564 of the Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 47, subd. 9 pt., as amended by L. 1896, ch. 264, § 7. Subdivision 2 came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 15, subd. 11, as amended by L. 1896, ch. 264, § 16. See also statement of Board of Statutory Consolidation in note following section 561, supra.

Section 563 of the Education Law of 1909 is now covered by section 562.

§ 564. Individual liability of trustee. Any person employed in disregard of section five hundred and sixty-one or of section five hundred and sixty-three shall have no claim for wages against the district, but may enforce the specific contract made against the trustees or board of education consenting to such employment as individuals.

This section was Education Law of 1909, § 565, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 49, subd. 9 pt., as amended by L. 1896, ch. 264, § 7. See also statement of Board of Statutory Consolidation in note following section 561, supra.

Section 564 of the Education Law of 1909 is now covered by section 563.

§ 565. Dismissal of teacher. No teacher shall be removed during a term of employment unless for neglect of duty, incapacity to teach, immoral conduct, or other reason which, when appealed to the commissioner of education, shall be held by him sufficient cause for such dismissal.

This section was Education Law of 1909, § 566, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 15, subd. 11 pt., as amended by L. 1896, ch. 264, § 16. See also statement of Board of Statutory Consolidation in note following section 561, supra.

Section 565 of the Education Law of 1909 is now covered by section 564.

Mandamus to compel reinstatement of teacher: see note 49 L. R. A. (N. S.) 62.

Right of taxpayer to enjoin removal of teacher: see note 51 L. R. A. (N. S.) 336.

Marriage as ground for nonappointment or dismissal of teacher: see note L. R. A. 1916C 795.

Liability of school board or superior officer for libel or slander of teacher: see note Ann. Cas. 1913E 195.

Libel or slander by insinuation of misconduct by teacher with pupils: see note 49 L. R. A. (N. S.) 1033.

Legality of discharge.— Where the plaintiff was employed originally in 1892 upon the strength of his state normal school diploma, and was continued in employment until 1897, when, without any action on the part of the board of education, or any one having authority to discharge him, he was prevented from performing the duties of a teacher, because the city superintendent of schools had informed him that he could not be employed after the expiration of his provisional license, the court said: "It does not appear that the plaintiff ever accepted a provisional license; his employment at all times was by virtue of his state normal school diploma, and, as said by the learned court below, his employment was 'for an indefinite time, like the city teachers generally; and from this it follows that he has never been legally removed or discharged,'" and was entitled to recover. Shaul v. Board of Education, (1905) 108 App. Div. 19, 95 N. Y. S. 479.

Nature of liability for discharge.— The liability, if any, created by the discharge of a teacher by the board of education of a union free school district, is not a liability of its individual members, but rather a liability of such board of education as a body corporate. Reynolds v. Foster, (1910) 66 Misc. 133, 123 N. Y. S. 273. And where the summons in an action for damages caused by the wrongful discharge of a teacher by a board of education was directed to and served upon only two of the board as individuals, a judgment rendered against the three members of the board individually was reversed as erroneously entered and the plaintiff was remitted to a new action, since the appellate court had no power to substitute the board of education as a defendant in the place of the individuals composing it, even if it were conceded that the plaintiff was entitled to judgment for the amount claimed. Reynolds v. Foster, (1910) 66 Misc. 133, 123 N. Y. S. 273.

Summary removal of teacher in city of New York.—A person who was a teacher in the public schools of the city of Brooklyn at the time of its incorporation into the Greater City of New York, was protected from summary removal by section 1114 of the Greater New York Charter, irrespective of the term for which he had been employed in the Brooklyn public school system at the time such charter became effective. Bogert v. Board of Education, (1905) 106 App. Div. 56, 94 N. Y. S. 180.

Teacher as city employee.—A teacher in the public schools of the city of Brooklyn was not an employee of a city or county so as to come within the

protection afforded by L. 1892, ch. 577, which declared that "no honorably discharged soldier or sailor of the war of the rebellion, 'holding a position by appointment in any city or county, and receiving a salary from such city and county,' shall be removed therefrom 'except for cause shown after a hearing had.'" Ridenour v. Board of Education, (1896) 15 Misc. 418, 37 N. Y. S. 109.

Removal by the abolition of an unnecessary position.— If the result of a change in the system of conducting the evening schools of the city of New York is to render the services of a principal in one of such schools unnecessary, such services may be dispensed with, although no charges have been preferred against him and he is not entitled to a mandamus reinstating him, since his right to retain his position is subject to the right of the board of education to abolish an unnecessary position. Cusack v. Board of Education, (1903) 174 N. Y. 136, 66 N. E. 677, reversing 78 App. Div. 470, 79 N. Y. S. 803.

Teacher's remedy.—A public school teacher is not entitled to a trial on charges before removal, but his remedy is by appeal to the commissioner of education or by an action for damages against the board of education. Ridenour v. Board of Education, (1896) 15 Misc. 418, 37 N. Y. S. 109.

What amounts to neglect of duty.— While the board of education of the city of New York "is vested with authority to excuse a teacher absent on the ground of illness, it may in some circumstances find that absence for alleged illness constitutes neglect of duty." People v. Board of Education, (1914) 160 App. Div. 557, 145 N. Y. S. 853, affirmed (1914) 212 N. Y. 463, 106 N. E. 307, reversing 82 Misc. 684, 144 N. Y. S. 87.

Mandamus to review dismissal.— The action of the board of education of the city of New York in dismissing a teacher for absence from duty without permission, will not be reviewed by mandamus where it appears that the board acted within its general jurisdiction and in compliance with the law. People v. Board of Education, (1914) 212 N. Y. 463, 106 N. E. 307, affirming 160 App. Div. 557, 145 N. Y. S. 853, reversing 82 Misc. 684, 144 N. Y. S. 87.

Necessity of exhausting remedy by appeal.— Where a teacher in the public schools of New York city has been removed by the board of education on a charge of "neglect of duty" arising out of her absence from school "for the purpose of bearing a child" her grievance, if any, is with respect to the sufficiency of the evidence to sustain the charge, and on that question she had her statutory remedy by appeal to the commissioner of education, which she should have exhausted before invoking the aid of the court by mandamus to compel reinstatement. People v. Board of Education, (1914) 160 App. Div. 557, 145 N. Y. S. 853, reversing 82 Misc. 684, 144 N. Y. S. 87, affirmed 212 N. Y. 463, 106 N. E. 307

§ 566. Teacher's salary payable as often as monthly. The salary of any teacher employed in the public schools of this state shall be due and payable at least as often as at the end of each calendar month of the term of employment.

This section was Education Law of 1909, § 567, which came from Consolidated School Law, L. 1896, ch. 556, tit. 15, § 18. See also statement of Board of Statutory Consolidation in note following section 561, supra.

Section 566 of the Education Law of 1909 is now covered by section 565.

§ 567. Common schools free to resident pupils; tuition from nonresident pupils. 1. A person over five and under twenty-one years of age is entitled to attend the public schools maintained in

the district or city in which such person resides without the payment of tuition.

2. Nonresidents of a district, if otherwise competent, may be admitted into the school of a district or city, upon the consent of the trustees, or the board of education, upon terms prescribed by such trustees or board.

3. The school authorities of a district or city must deduct from the tuition of a nonresident pupil whose parent or guardian owns property in such district or city and pays a tax thereon for the support of the schools maintained in such district or city the amount of such tax.

This section was derived from Education Law of 1909, § 568, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 36. See also statement of Board of Statutory Consolidation in note following section 561, supra.

Section 568 of the Education Law of 1909 is now covered by section 567.

Legislature to provide for free common schools: see CONSTITUTION, art. IX, § 1.

Residence of pupil as affecting right to attend public school: see notes 3 Ann. Cas. 693; 12 Ann. Cas. 897; Ann. Cas. 1913B 1017; 51 L. R. A. (N. S.) 234.

"Residence" as synonymous with "domicil" in statute regulating admission of pupils to school: see note Ann. Cas. 1915C 791.

Right of Indian child to admission to public school: see note Ann. Cas. 1915C 482.

Power to expel or suspend from school: see note 15 Ann. Cas. 404, 50 L. R. A. (N. S.) 267.

Right of parent to sue for expulsion of children from school: see note 12 Ann. Cas. 406.

Forbidding student's affiliation with secret society: see note L. R. A. 1915D 588.

Recovery of advance payment of tuition fee on expulsion or withdrawal of pupil from school: see note Ann Cas. 1915D 313. *Mandamus to compel issuance of diploma:* see note L. R. A. 1913B 616.

Conclusiveness of decision of school authorities with respect to scholarship or promotion of pupils: see note Ann. Cas. 1915A 753. *Validity and construction of statute, ordinance, etc., providing for transportation of pupils to and from school:* see note Ann. Cas. 1912C 762.

Purpose of section.— In enacting the provisions relative to free tuition for resident children, "it was the intention of the Legislature that children temporarily domiciled in the district should receive free education there, unless it appeared that the parents of the children or their legal guardians had a distinct residence elsewhere which gave their children the right to free tuition, in which case, of course, the residence of the child would follow the parent." People v. Hendrickson, (1908) 125 App. Div. 256, 109 N. Y. S. 403, affirmed (1909) 196 N. Y. 551, 90 N. E. 1163, affirming 54 Misc. 337, 104 N. Y. S. 122.

What are common schools.— It has been held that the schools of the city of Troy, in charge of a board of education constituted in pursuance of chapter 182, Laws of 1898, providing for the government of cities of the second class, were common schools; and the provision of chapter 560 of the Laws of 1902 (since repealed) were applicable thereto. Matter of Harris, (1908) 58 Misc. 297, 109 N. Y. S. 983.

What constitutes residence.— In an action brought by a board of education to recover tuition for the defendant's children on the ground that they were nonresidents of the district, it appeared that the defendant, who had previously lived in another town and paid tuition for his children as nonresidents, had during the period in question rented a house within the plaintiff's school district where he lived through the winter, returning to his house in the other town during the summer. It also appeared that he was assessed in the other town as a resident taxpayer; that he registered and voted there and held the office of supervisor. Under such circumstances it was held that he was not a resident of the school district to which he moved during the winter and consequently was liable for tuition. Board of Education v. Crill, (1912) 149 App. Div. 407, 134 N. Y. S. 311, reversing 73 Misc. 472, 133 N. Y. S. 394.

Where a pupil sixteen years of age had left her parents' home and was residing permanently in a family in the village of Waterville, Oneida county, with whom she remained the entire year, her parents residing in another school district, she was entitled to attend the public schools of Waterville without the payment of tuition. Op. Atty.-Gen. (1905) 553.

An orphan, who has been placed in a private home by a children's aid society under an agreement by the society to pay a certain sum per week for his clothing, which is disbursed by the persons with whom he is so placed, and who treat him as a member of the family, is a resident of the school district where his custodians reside, within the meaning of the statute, and is entitled to free tuition in the public schools of that district. People v. Hendrickson, (1908) 125 App. Div. 256, 109 N. Y. S. 403, affirmed (1909) 196 N. Y. 551, 90 N. E. 1163, affirming 54 Misc. 337, 104 N. Y. S. 122.

Question of residence as one of law or fact.— In determining whether or not a child is a resident of a particular school district, the inquiry involves the determination of "a mixed question of law and fact." People v. Hendrickson, (1908) 125 App. Div. 256, 109 N. Y. S. 403, affirmed (1909) 196 N. Y. 551, 90 N. E. 1163.

ARTICLE 20-a*

Medical Inspection

Section 570. Medical inspection to be provided.
571. Employment of medical inspector.
572. Pupils to furnish health certificates.
573. Examination by medical inspector.
574. Record of examinations; eye and ear tests.
575. Existence of contagious diseases; return after illness.
576. Enforcement of law.
577. State medical inspection of schools.

§ 570. Medical inspection to be provided. Medical inspection shall be provided for all pupils attending the public schools in this state, except in cities of the first class, as provided in this article. Medical inspection shall include the services of a trained registered nurse, if one is employed, and shall also include such services as may be rendered as provided herein in examining pupils for the existence of disease or physical defects and in testing the eyes and ears of such pupils.

New. Added by L. 1913, ch. 627.
Vaccination of school children: see Public Health Law, § 310.
Teachers to report tuberculosis: see Public Health Law, § 320.
Compulsory vaccination: see notes 1 Ann. Cas. 336; 10 Ann. Cas. 882; 14 Ann. Cas. 945. *Right to suspend child from school because not vaccinated:* see note Ann. Cas. 1912A 375.

§ 571. Employment of medical inspectors. The board of education in each city and union free school district, and the trustee or board of trustees of a common school district, shall employ, at a compensation to be agreed upon by the parties, a competent physician as a medical inspector, to make inspections of pupils attending the public schools in the city or district. If appointed by a board of education of a city such physician shall reside within the city. The physicians so employed shall be legally qualified to practice medicine in this state, and shall have so practiced for a period of at least two years immediately prior to such

* This article is new and was added by L. 1913, ch. 627.

employment. Any such board of trustees may employ one or more school nurses, who shall be registered trained nurses and authorized to practice as such. Such nurses when so employed shall aid the medical inspector of the district and shall perform such duties for the benefit of the public schools as may be prescribed by such inspector.

A medical inspector or school nurse may be employed by the trustees or boards of education of two or more school districts, and the compensation of such inspector, and the expenses incurred in making inspections of pupils as provided herein, shall be borne jointly by such districts, and be apportioned among them according to the assessed valuation of the taxable property therein.

In cities and union free school districts having more than five thousand inhabitants, the board of education may employ such additional medical inspectors as may be necessary to properly inspect the pupils in the school in such cities and union free school district.

The trustees of a common school district or the board of education of a union free school district whose boundaries are coterminous with the boundaries of an incorporated village shall, in the employment of medical inspectors, employ the health officer of the town in which such common school district is located or the health officer of such union free school district, so far as may be advantageous to the interests of such district.

New. Added by L. 1913, ch. 627, and amended to read as above by L. 1916, ch. 182.

Registration of nurses: see PUBLIC HEALTH LAW, § 250 et seq.

§ 572. Pupils to furnish health certificates. A health certificate shall be furnished by each pupil in the public schools upon his entrance in such schools, and thereafter at the opening of such schools at the beginning of each school year. Each certificate shall be signed by a duly licensed physician who is authorized to practice medicine in this state, and shall describe the condition of the pupil when the examination was made, which shall not be more than thirty days prior to the presentation of such certificate, and state whether such pupil is in a fit condition of bodily health to permit his or her attendance at the public schools. Such certificate shall be submitted within thirty days to the principal or

teacher having charge of the school and shall be filed with the clerk of the district. If such pupil does not present a health certificate as herein required, the principal or teacher in charge of the school shall cause a notice to be sent to the parents of such pupil that if the required health certificate is not furnished within thirty days from the date of such notice, an examination will be made of such pupil as provided herein.

New. Added by L. 1913, ch. 627.

§ 573. Examinations by medical inspectors. Each principal or teacher in charge of a public school shall report to the medical inspector having jurisdiction over such school the names of all pupils who have not furnished health certificates as provided in the preceding section, and the medical inspector shall cause such pupils to be separately and carefully examined and tested to ascertain whether any of them are suffering from defective sight or hearing, or from any other physical disability tending to prevent them from receiving the full benefit of school work, or requiring a modification of such work to prevent injury to the pupils or to receive the best educational results. If it be ascertained upon such test or examination that any of such pupils are afflicted with defective sight or hearing or other physical disability as above described the principal or teacher, having charge of such school, shall notify the parents or other persons with whom such pupils are living, as to the existence of such defects and physical disability. If the parents or guardians are unable or unwilling to provide the necessary relief and treatment for such pupils, such fact shall be reported by the principal or teacher to the medical inspector, whose duty it shall be to provide relief for such pupils.

New. Added by L. 1913, ch. 627.

Examination and quarantine of children admitted to institutions for orphan, destitute or vagrant children or juvenile delinquents: see PUBLIC HEALTH LAW, § 313.

§ 574. Record of examinations; eye and ear tests. Medical inspectors or principals and teachers in charge of public schools shall make eye and ear tests of the pupils in such schools, at least once in each school year. The state commissioner of health shall

prescribe the method of making such tests, and shall furnish general instruction in respect to such tests. The commissioner of education, after consultation with the state commissioner of health, shall prescribe and furnish to the school authorities suitable rules of instruction as to tests and examinations made as provided in this article, together with test cards, blanks, record books and other useful appliances for carrying out the purposes of this article. The commissioner of education shall provide for pupils in the normal schools, city training schools and training classes instruction and practice in the best methods of testing the sight and hearing of children.

New. Added by L. 1913, ch. 627.

§ 575. Existence of contagious diseases; return after illness. Whenever upon investigation a pupil in the public schools shows symptoms of small-pox, scarlet fever, measles, chicken-pox, tuberculosis, diphtheria, influenza, tonsilitis, whooping-cough, mumps, scabies or trachoma, he shall be excluded from the school and sent to his home immediately, in a safe and proper conveyance, and the health officer of the city or town shall be immediately notified of the existence of such disease. The medical inspector shall examine each pupil returning to a school without a certificate from the health officer of the city or town, or the family physician, after absence on account of illness or from unknown cause.

Such medical inspectors may make such examinations of teachers, janitors and school buildings as in their opinion the protection of the health of the pupil and teachers may require.

New. Added by L. 1913, ch. 627.

§ 576. Enforcement of law. It shall be the duty of the commissioner of education to enforce the provisions of this article, and he may adopt such rules and regulations not inconsistent herewith, after consultation with the state commissioner of health, for the purpose of carrying into full force and effect the objects and intent of this article.

He may, in his discretion, withhold the public money from a district which willfully refuses or neglects to comply with this article, and the rules and regulations made hereunder.

New. Added by L. 1913, ch. 627.

§ 577. State medical inspection of schools. The commissioner of education shall appoint a competent physician who has been in the actual practice of his profession for a period of at least five years, as state medical inspector of schools. The state medical inspector of schools, under the supervision of the commissioner of education, shall perform such duties as may be required for carrying out the provisions of this article. The said medical inspector shall be appointed in the same manner as other employees of the education department.

New. Added by L. 1913, ch. 627.

ARTICLE 21*

CONTRACT SYSTEM

Section 580. District meeting to authorize contract system.
581. District or city with which such contract may be made.
582. Trustees or boards of education may contract to receive such children.
583. Form of contract.
584. Validity of contract.
585. Apportionment to contracting district.
586. Report of pupils from other districts.

§ 580. District meeting to authorize contract system. Any school district may decide by a majority vote of the qualified voters present and voting at any district meeting:

1. To contract for the education of all the children of such district in another district or in a city instead of maintaining a home school;

2. To contract for the education of part of the children of such district in another district or in a city and maintain a home school.

This section and sections 581, 582, 583, 584 and 585 were derived from Education Law of 1909, § 600, which related to "Power to make and effect of contracts."

This section came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 14, as amended by L. 1896, ch. 264, § 18; L. 1897, ch. 294, § 1; L. 1903, ch. 265, § 1; L. 1904, ch. 322, § 1. The report of the Board of Statutory Consolidation (1907) at page 1168 refers to certain changes made by the board as follows: "Introduction of new matter suggested as follows: after words 'district, village or city,' in the sixth line, add 'or the local board of a state normal school;' after words 'city, village or school district' in the ninth line insert 'or normal school.' Consolidated School Law, tit. 15, § 14, authorizes school districts to contract with other districts, villages or cities for the education of its children. Normal schools maintain practice departments in which pupils of all grades are instructed and the work of these departments is the equivalent of the work of public schools. In some sections of the state school districts for various reasons may contract more advantageously with normal schools than with school districts."

Section 580 of the Education Law of 1909 is now covered by section 670.

Contributions to district contracting for education of children.—Where a school district which has not conducted an academic department makes a contract for the education of its children of school age, the state should contribute under section 493, subdivision 6, for each pupil from such district attending the academic department, inasmuch as a fair construction requires

* The subject of this article was article 23 of the Education Law of 1909. Article 21 of the Education Law of 1909 was, "Teachers and Pupils."

that subdivision 1 of this section be read to mean that the district may, instead of maintaining a home school, contract for all the children it has previously been educating. Op. Atty.-Gen. (1913) 666

§ 581. District or city with which such contract may be made. 1. Such contract may be made with one or more districts or cities. The district meeting authorizing such contract may designate the districts or cities with which such contracts may be made.

2. If the district meeting fails to make such designation or if any district or city so designated refuses to make such contract, the trustees of the district authorizing such contract may enter into a contract with a district willing to make such contract.

This section was derived from Education Law of 1909, § 600. The statement of the Board of Statutory Consolidation in relation to it is given in the note to section 580, supra.

Section 581 of the Education Law of 1909 is now covered by section 671.

§ 582. Trustees or boards of education may contract to receive such children. The trustees or board of education of any district or city may enter into a contract to receive and educate in the schools of such district or city the children of any district which shall authorize its trustees to contract for the education of its children as provided by section five hundred and eighty of this chapter.

This section was derived from Education Law of 1909, § 600. The statement of the Board of Statutory Consolidation in relation to it is given in the note to section 580, supra.

Section 582 of the Education Law of 1909 is now covered by section 672.

§ 583. Form of contract. Such contract shall be written and in the form prescribed by the commissioner of education.

This section was derived from Education Law of 1909, § 600. The statement of the Board of Statutory Consolidation in relation to it is given in the note to section 580, supra.

Section 583 of the Education Law of 1909 is now covered by section 673.

§ 584. Validity of contract. Such contract shall not be valid or binding upon either party thereto until a copy thereof is filed with the commissioner of education and approved by such commissioner.

This section was derived from Education Law of 1909, § 600. The statement of the Board of Statutory Consolidation in relation to that section is given in the note to section 580, supra.

§ 585. Apportionment to contracting district. 1. Whenever the period of time which a district contracts for the education of its children or such period together with the time school is actually taught in said district shall amount to one hundred and sixty days and the contract shall include all the children of school age in such district, such district shall be entitled to receive one district quota.

2. Whenever a district maintains a home school and contracts for the education of at least twelve of its children in another district or city, it shall be entitled to one teacher's quota in addition to its district quota.

3. No school district operating under the contract system shall receive a greater apportionment than the total expense incurred in payment of tuition and transportation of pupils as shown by the report of the trustee to the school commissioner.

4. Whenever a district contracts with another district or a city and such district or city maintains a high school or an academic department, and whenever the expense of the tuition and transportation for the elementary children of said district shall exceed two hundred and fifty dollars, the tuition of the academic pupils attending such high school or academic pupils from such contracting district may be paid by the state as provided by section four hundred and ninety-three of this chapter.

Subd. 4 was added by L. 1915, ch. 194.

This section, with the exception of subdivision 4, was derived from Education Law of 1909, § 600. The statement of the Board of Statutory Consolidation in relation to that section is given in the note to section 580, supra.

§ 586. Report of pupils from other districts. The children attending a school under any such contract shall be reported to the commissioner of education by the trustees or board of education of the district or city wherein such children attend school as though they were residents of such city or school district.

This section was derived from Education Law of 1909, § 601. It came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 15, as amended by L. 1896, ch. 264, § 19; L. 1897, ch. 294, § 1; L. 1903, ch. 265, § 2.

Section 602 of the Education Law of 1909 was omitted in the enactment of Education Law of 1910 (ch. 140).

ARTICLE 22*

GENERAL INDUSTRIAL SCHOOLS, TRADE SCHOOLS, AND SCHOOLS OF AGRICULTURE, MECHANIC ARTS AND HOME MAKING

Section 600. General industrial schools, trade schools, and schools of agriculture, mechanic arts and home making, may be established in cities.
601. Such schools may be established in union free school districts.
602. Appointment of an advisory board.
603. Authority of the board of education over such schools.
604. State aid for general industrial schools, trade schools, and schools of agriculture, mechanic arts and home making.
605. Application of such moneys.
606. Annual estimate by board of education and appropriations by municipal and school districts.
607. Courses in schools of agriculture for training of teachers.

§ 600. General industrial schools, trade schools and schools of agriculture, mechanic arts and home making, may be established in cities. The board of education of any city, and in a city not having a board of education the officer having the management and supervision of the public school system, may establish, acquire, conduct and maintain as a part of the public school system of such city the following:

1. General industrial schools open to pupils who have completed the elementary school course or who have attained the age of fourteen years, and

2. Trade schools open to pupils who have attained the age of sixteen years and have completed either the elementary school course or a course in the above mentioned general industrial

* The subject of this article was article 33 of the Education Law of 1909, "General Industrial and Trade Schools." Article 33 of the Education Law was derived from Consolidated School Law, L. 1894, ch. 556, tit. 15, article 10, "Industrial Training in the Public Schools."
Article 22 of the Education Law of 1909 was, "Text-Books."

school or who have met such other requirements as the local school authorities may have prescribed; and[1]

3. Schools of agriculture, mechanic arts and home making, open to pupils who have completed the elementary school course or who have attained the age of fourteen, or who have met such other requirements as the local school authorities may have prescribed; and

4.[2] Part time or continuation schools in which instruction shall be given in the trades and in industrial, agricultural and home making subjects, and which shall be open to pupils over fourteen years of age who are regularly and lawfully employed during a part of the day in any useful employment or service, which subjects shall be supplementary to the practical work carried on in such employment or service.

5. Evening vocational schools in which instruction shall be given in the trades and in industrial, agricultural and home making subjects, and which shall be open to pupils over sixteen years of age, who are regularly and lawfully employed during the day and which provide instruction in subjects related to the practical work carried on in such employment; but such evening vocational schools providing instruction in home making shall be open to all women over sixteen years of age who are employed in any capacity during the day.

The word "school," as used in this article, shall include any department or course of instruction established and maintained in a public school for any of the purposes specified in this section.

Amended to read as above by L. 1913, ch. 747. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 820, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 25. The report of the Board of Statutory Consolidation (1907) at page 1170 refers to certain changes made by the board as follows: "'Village' omitted for the reason that there is no village board of education. If the district and village boundaries are coterminous the board is the board of the district and in nowise the board of the village."

Section 600 of the Education Law of 1909 is now covered by sections 580–585.

§ 601. Such schools may be established in union free school districts. The board of education of any union free school district shall also establish, acquire and maintain such schools for like

[1] Word "and," new.
[2] Remainder of section new.

purposes whenever such schools shall be authorized by a district meeting. [1]The trustee or board of trustees of a common school district may establish a school or a course in agriculture, mechanic arts and home making, when authorized by a district meeting.

Amended to read as above by L. 1913, ch. 747. The change is indicated in the footnote.

This section was derived from Education Law of 1909, § 820. The statement of the Board of Statutory Consolidation in relation to that section is given in the note to section 600, supra.

Section 601 of the Education Law of 1909 is now covered by section 586.

§ 602. Appointment of an advisory board. 1. The board of education in a city and the officer having the management and supervision of the public school system in a city not having a board of education shall appoint an advisory board of five members representing the local trades, industries, and occupations. In the first instance two of such members shall be appointed for a term of one year and three of such members shall be appointed for a term of two years. Thereafter as the terms of such members shall expire the vacancies caused thereby shall be filled for a full term of two years. Any other vacancy occurring on such board shall be filled by the appointing power named in this section for the remainder of the unexpired term.

2. It shall be the duty of such advisory board to counsel with and advise the board of education or the officer having the management and supervision of the public school system in a city not having a board of education in relation to the powers and duties vested in such board or officer by section six hundred and three of this chapter.

This section was Education Law of 1909, § 821, to which the words, "and occupations," at the end of the first section, were added by the Education Law of 1910 (ch. 140).

Section 602 of the Education Law of 1909 was omitted in the enactment of Education Law of 1910 (ch. 140).

§ 603. Authority of the board of education over such schools. The board of education in a city and the officer having the management and supervision of the public school system in a city not having a board of education and the board of education in a union free school district[2] in which city or district[3] a general industrial

[1] Remainder of section new.

[2] Words "which authorizes the establishment," omitted.

[3] Words "in which city or district," new.

school, a trade school,[1] a school of agriculture, mechanic arts and home making, or a part time or continuation school, or an evening vocational school is established as provided in this article,[2] is vested with the same power and authority over the management, supervision and control of such school and the teachers or instructors employed therein as such board or officer now has over the schools and teachers under their charge. Such boards of education or such officer shall also have full power and authority:

1. To employ competent teachers or instructors.
2. To provide proper courses of study.
3. To purchase or acquire sites and grounds and to purchase, acquire, lease or construct and to repair suitable shops or buildings and to properly equip the same.
4. To purchase necessary machinery, tools, apparatus and supplies.

Amended to read as above by L. 1913, ch. 747. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 822.

§ 604. State aid for general industrial schools, trade schools, and schools of agriculture, mechanic arts and home making.

1. The commissioner of education in the annual apportionment of the state school moneys shall apportion therefrom to each city and union free school district for each general industrial school, trade school, part time or continuation school or evening vocational school, maintained therein for thirty-six weeks during the school year and employing one teacher whose work is devoted exclusively to such school, and having an enrollment of at least fifteen pupils and maintaining an organization and a course of study, and conducted in a manner approved by him, a sum equal to two-thirds of the salary paid to such teacher, but not exceeding one thousand dollars.

2. He shall also apportion in like manner to each city, union free school district or common school district for each school of agriculture, mechanic arts and home making, maintained therein for thirty-six weeks during the school year, and employing one teacher whose work is devoted exclusively to such school, and having an enrollment of at least fifteen pupils and maintaining an

[1] Word "or" omitted.

[2] Words "or a part time or continuation school, or an evening vocational school is established as provided in this article," new.

organization and course of study and conducted in a manner approved by him, a sum equal to two-thirds of the salary paid to such teacher. Such teacher may be employed for the entire year, and during the time that the said school is not open shall be engaged in performing such educational services as may be required by the board of education or trustees, under regulations adopted by the commissioner of education. Where a contract is made with a teacher for the entire year and such teacher is employed for such period, as herein provided, the commissioner of education shall make an additional apportionment to such city or district of the sum of two hundred dollars. But the total amount apportioned in each year on account of such teacher shall not exceed one thousand dollars.

3. The commissioner of education shall also make an additional apportionment to each city and union free school district for each additional teacher employed exclusively in the schools mentioned in the preceding subdivisions of this section for thirty-six weeks during the school year, a sum equal to one-third of the salary paid to each such additional teacher, but not exceeding one thousand dollars for each teacher.

4. The commissioner of education, in his discretion, may apportion to a district or city maintaining such schools or employing such teachers for a shorter time than thirty-six weeks, or for a less time than a regular school day, an amount pro-rata to the time such schools are maintained or such teachers are employed. This section shall not be construed to entitle manual training high schools or other secondary schools maintaining manual training departments, to an apportionment of funds herein provided for.

Any person employed as teacher as provided herein may serve as principal of the school in which the said industrial or trade school or course, or school or course of agriculture, mechanic arts and home making, is maintained.

Amended to read as above by L. 1913, ch. 747. This section was derived from Education Law to 1909, § 823.

§ 605. Application of such moneys. All moneys apportioned by the commissioner of education for[1] schools under this article[2]

1 Words "general industrial or trade," omitted.
2 Words "under this article," new.

shall be used exclusively for the payment of the salaries of teachers employed in[1] such schools in the city or district to which such moneys are apportioned.

Amended to read as above by L. 1913, ch. 747. The change is indicated in the footnotes.

This section was derived from Education Law, § 823.

§ 606. Annual estimate by board of education and appropriations by municipal and school districts.

1. The board of education of each city or the officer having the management and supervision of the public school system in a city not having a board of education shall file with the common council of such city, within thirty days after the commencement of the fiscal year of such city, a written itemized estimate of the expenditures necessary for the maintenance of its general industrial schools, trade schools,[2] schools of agriculture, mechanic arts and home making, part time or continuation schools or evening vocational schools,[3] and the estimated amount which the city will receive from the state school moneys applicable to the support of such schools. The common council shall give a public hearing to such persons as wish to be heard in reference thereto. The common council shall adopt such estimate and, after deducting therefrom the amount of state moneys applicable to the support of such schools, shall include the balance in the annual tax budget of such city. Such amount shall be levied, assessed and raised by tax upon the real and personal property liable to taxation in the city at the time and in the manner that other taxes for school purposes are raised. The common council shall have power by a two-thirds vote to reduce or reject any item included in such estimate.

2. The board of education in a union free school district which maintains a general industrial school, trade school,[2] a school of agriculture, mechanic arts and home making, part time or continuation schools or evening vocational schools,[3] shall include in its estimate of expenses pursuant to the provisions of sections three hundred and twenty-three and three hundred and twenty-

[1] Words "payment of the salaries of teachers employed in," substituted for words "support and maintenance of."

[2] Word "or" omitted.

[3] Words "part time or continuation schools or evening vocational schools," new.

seven of this chapter the amount that will be required to maintain such schools after applying toward the maintenance thereof the amount apportioned therefor by the commissioner of education. Such amount shall thereafter be levied, assessed and raised by tax upon the taxable property of the district at the time and in the manner that other taxes for school purposes are raised in such district.

Amended to read as above by L. 1913, ch. 747. The changes are indicated in the footnotes. It came from Education Law of 1909, § 824.

§ 607. Courses in schools of agriculture for training of teachers. The state schools of agriculture at Saint Lawrence University, at Alfred University and at Morrisville may give courses for the training of teachers in agriculture, mechanic arts, domestic science or home making, approved by the commissioner of education. Such schools shall be entitled to an apportionment of money as provided in section six hundred and four of this chapter for schools established in union free school districts. Graduates from such approved courses may receive licenses to teach agriculture, mechanic arts and home making in the public schools of the state, subject to such rules and regulations as the commissioner of education may prescribe.

ARTICLE XXII-a*

Farm School in Counties

Section 610. Establishment of farm schools.
611. Acquisition of lands and erection of buildings.
612. Board of managers.
613. Powers and duties of board.
614. Powers of superintendent; discipline of school.
615. Course of instruction.
616. State aid.
617. Children admitted to such school.
618. Agreements with parents and guardians to pay expense of maintenance; compulsory support.
619. Maintenance by county.
619-a. Reports to board of supervisors; inspection.
619-b. Powers of commissioner of education and state department of education.

§ 610. Establishment of farm schools. The board of supervisors of any county outside of the city of New York may adopt a resolution by a majority vote of the members of the board establishing a farm school for the purpose of giving instruction in the trades and in industrial, agricultural and homemaking subjects to children of the county not more than eighteen nor less than eight years of age who may be admitted thereto as provided by law.

New. Added by L. 1915, ch. 307.

§ 611. Acquisition of lands and erection of buildings. Upon the adoption of the resolution as provided in the foregoing section the board of supervisors shall purchase land in some conveniently accessible place in the county to be used for the purpose of such school. They may acquire such land by gift, purchase or condemnation. The land when so acquired shall be held in the name of the county for the benefit of such school. Upon the acquisition of such land the board of supervisors shall erect the necessary buildings and suitably equip them for use. Such board may also provide for the improvement of existing buildings and make such repairs and alterations on the buildings upon the land

* This is a new article added by L. 1915, ch. 307.

used for the purpose of the school as may be necessary for the maintenance and operation thereof.

New. Added by L. 1915, ch. 307.

§ 612. Board of managers. The board of managers of such school shall consist of not less than five members and shall be composed of all the city, village and district superintendents of schools of the county in which it is located, in addition to such other members as may be necessary to make a total numbership of such board of not less than five. Such additional members of the board shall be appointed by the board of supervisors from the resident taxpayers of the county, who shall serve for terms of four years commencing on the first day of January succeeding their appointment. Such terms shall be so arranged that the terms of no two of the members so appointed shall expire in the same year, and for this purpose the terms of the members first appointed hereunder shall be as follows: In case one member shall be appointed, the term shall be four years, in case two members shall be appointed, the term shall be four and two years, respectively, in case three members shall be appointed, the terms shall be four, three and two years, and in case four members shall be appointed, the terms shall be four, three, two and one year, respectively, which terms shall commence on the first day of January succeeding their appointment, and their successors shall be appointed for full terms of four years as above provided. Appointments to fill vacancies shall be for the unexpired portion of the terms. The members of the board shall serve without compensation. They shall receive their necessary expenses incurred in the performance of their duties. The amount of such expenses shall be charged against the county and shall be paid in the same manner as other county charges. The board shall organize by the election of one of its members as chairman and another as secretary.

New. Added by L. 1915, ch. 307.

§ 613. Powers and duties of board. The board of managers of such school shall be responsible for the operation and maintenance of the school; employ a superintendent and such teachers and assistants as may be required for the operation and maintenance of the school when authorized so to do by the board of

supervisors of the county; fix the compensation of such superintendent, teachers and assistants within the amount made available therefor by the said board of supervisors; prescribe rules and regulations for the management of the school and for the purpose of carrying into effect the object thereof; provide for the detention, maintenance and instruction of all children who are admitted to the school.

New. Added by L. 1915, ch. 307.

§ 614. Powers of superintendent; discipline of school. The superintendent of the school shall, subject to the regulations of the board of managers:

1. Have the general management of the school and the land, buildings and equipment thereof, and devote his entire time to its affairs;

2. Be responsible for the welfare of pupils of the school and see that the regulations and directions of the board of managers are carried into effect;

3. Supervise and direct the methods of instruction and the performance of duties by the teachers, assistants and employees of such school;

4. Prescribe rules for the government and discipline of the pupils of the school and cause such rules to be enforced;

5. Protest and care for the property of the school;

6. Give special attention to the proper instruction, detention, restraint, discipline, comfort and physical and moral welfare of the pupils of the school, and perform such other duties as may be required of him by the board of managers, with a view of carrying out the purposes of this article.

New. Added by L. 1915, ch. 307.

§ 615. Course of instruction. The board of managers shall prescribe the courses of instruction to be followed in such school, subject to the approval of the commissioner of education. Such instruction shall include instruction in agriculture, mechanic arts, trades and homemaking. The provisions of this chapter and of the regulations of the education department relating to vocational instruction in the public schools shall apply to such school so far as they do not conflict with the provisions of this article and may be made applicable thereto.

New. Added by L. 1915, ch. 307.

§ 616. State aid. There shall be annually apportioned to such school from the moneys appropriated by the state legislature for the support of the public schools of the state the sum of one thousand dollars and an additional sum of two hundred dollars for each teacher employed therein for a period of thirty-six weeks during each school year, whose entire time is given to the instruction of pupils in such school. No such apportionment shall be made unless there are at least fifteen pupils enrolled and actually in attendance at such school during such period of thirty-six weeks, and unless such school maintains an organization and a course of study and is conducted in a manner approved by the commissioner of education.

New. Added by L. 1915, ch. 307.

§ 617. Children admitted to such school. Children not more than eighteen nor less than eight years of age may be admitted to or received in such school, either (1) upon the application of the parents or guardians having the legal custody or control of such children, accompanied by the written consent of such parents or guardians, or (2) upon commitment thereto as truants or incorrigible pupils as provided in section six hundred and thirty-five of this chapter, or (3) upon commitment thereto as juvenile delinquents as provided by law, provided that children convicted of crime shall not be committed to such school. Children who have no homes or who are without proper parental control or who are under improper guardianship may be sent to and received in such school, in the same manner and under the same authority as in case of other children who are improperly provided for at home.

New. Added by L. 1915, ch. 307.

§ 618. Agreements with parents and guardians to pay expense of maintenance; compulsory support. The board of managers may make an agreement with the parents or guardian of a child in such school for the payment of an amount therein specified for the instruction and maintenance of such pupil. An application for the admission of a child with the consent of the parents or guardian shall not be granted unless suitable provision be made for the clothing for such child. The amount agreed to be paid for

instruction, maintenance and clothing shall be secured to the satisfaction of the board of managers. Such board shall ascertain by investigation the financial ability of parents, guardians, and other persons legally liable for the support of pupils admitted to such school upon commitment, and may demand of such parents, guardians or persons the payment of an amount reasonably sufficient to pay all or a portion of the cost of the instruction, maintenance and clothing of such pupils. The board may proceed against such parents, guardians or persons, by proper suit or proceeding in a court of competent jurisdiction for the recovery of the amount agreed or required to be paid, as herein provided. The amount so recovered, after the payment of the necessary costs and expenses of such suit or proceeding, shall be paid into the treasury of the county, and shall be applied to the payment of the cost of the instruction, maintenance and clothing of such pupils.

New. Added by L. 1915, ch. 307.

§ 619. Maintenance by county. The board of supervisors shall provide for the maintenance of such school, the repair and improvement of the lands and buildings used or occupied thereby, and the equipment thereof with necessary machinery, tools, apparatus and supplies. The cost thereof, and the expenses incurred for such purposes, shall be charges against the county and shall be audited and paid in the same manner as other charges against the county. The maintenance herein provided for shall include the support, instruction, care, board and clothing of pupils and such other expenses as are necessarily incurred in the operation of the school.

New. Added by L. 1915, ch. 307.

§ 619-a. Reports to board of supervisors; inspection. The board of managers of such school shall report in writing to the board of supervisors of the county when called upon to do so, and shall transmit to the clerk of the board, annually, on or before the thirtieth day of June. Such annual report shall state such facts in respect to the school as the board of managers may deem advisable and as the board of supervisors may require. The board of supervisors may, by a committee or any of its members

or appointees, inspect such school, and for such purpose may enter upon the land and into the buildings of such school at all reasonable times.

New. Added by L. 1915, ch. 307.

§ 619-b. Powers of commissioner of education and state department of education. A school established as provided herein shall be deemed a part of the public school system of the state, and shall be subject to the supervision and control of the commissioner of education and the state department of education in the same manner as other public schools, and shall not be subject to any of the laws of the state relating to charitable or penal institutions.

New. Added by L. 1915, ch. 307.

ARTICLE 23*

Compulsory Education

Section 620. Instruction required.
621. Required attendance upon instruction.
622. When a boy is required to attend evening school.
623. Instruction elsewhere than at a public school.
624. Duties of persons in †paternal relation to children.
625. Penalty for failure to perform †paternal duty.
626. Unlawful employment of children and penalty therefor.
627. Employer must display record certificate and evening certificate.
628. Punishment for unlawful employment of children.
629. Teachers must keep record of attendance.
630. School record certificate.
631. Evening, part-time or continuation school certificate.
632. Attendance officers.
633. Arrest of truants.
634. Interference with attendance officers.
635. Truant schools.
636. Enforcement of law and withholding the state moneys by commissioner of education.

§ 620. Instruction required. The instruction required under this article shall be:

1. At a public school in which at least the six common school branches of reading, spelling, writing, arithmetic, English language and geography are taught in English.

2. Elsewhere than a public school upon instruction in the same subjects taught in English by a competent teacher.

Section 620 of the Education Law of 1909 is now covered by section 770.

§ 621. Required attendance upon instruction.

1. Every child within the compulsory school ages, in proper physical and mental condition to attend school, residing in a city

* The subject of this article was article 20 of the Education Law of 1909, which included sections 530–538. Section 530 was repealed and sections 531–538 were renumbered sections 530–538 and amended by L. 1909, ch. 409. Article 23 of the Education Law of 1909 was, "Contract System."

† So in original.

or school district having a population of five thousand or more and employing a superintendent of schools, shall regularly attend upon instruction as follows:

(a) Each child between seven and fourteen years of age shall attend the entire time during which the school attended is in session, which period shall not be less than one hundred and sixty days of actual school.

(b) Each child between fourteen and sixteen years of age not regularly and lawfully engaged in any useful employment or service, and to whom an employment certificate has not been duly issued under the provisions of the labor law, shall so attend the entire time during which the school attended is in session.

2. Every such child, residing elsewhere than in a city or school district having a population of five thousand or more and employing a superintendent of schools, shall attend upon instruction [1]during the entire time that the school in the district shall be in session as follows:

(a) Each child between eight and fourteen years of age.

(b) Each child between fourteen and sixteen years of age not regularly and lawfully engaged in any useful employment or service.

3. The provisions of this section are intended to include all blind children, except such as may receive appointments under the provisions of article thirty-eight of this chapter.

Subd. 2 was amended to read as above by L. 1913, ch. 511. The change is indicated in the footnote. Subd. 3 was added by L. 1911, ch. 710. This section was derived from Education Law of 1909, § 531 (as renumbered section 530 and amended by L. 1909, ch. 409). It came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 3, as added by L. 1894, ch. 671, and as amended by L. 1903, ch. 459, § 2; L. 1907, ch. 103, § 1; L. 1907, ch. 585, § 1.

Section 621 of the Education Law of 1909 is now covered by section 771.

Compulsory attendance at public schools: see note Ann. Cas. 1912A 373.

Expulsion or exclusion of child from school as excuse or justification for noncompliance with compulsory education law: see note L. R. A. 1915D 223.

Exemption of common school graduates.— Under the substantially similar provisions of the Compulsory Education Law, L. 1894, ch. 671, children were required, except in the cases specified, to be instructed until they should reach the age of sixteen years. The law did not limit the instruction, however, and a student under that age who had received a certificate from the board of regents of his graduation from a common school was not exempt from the operation of its provisions. Op. Atty.-Gen. (1894) 272.

[1] Remainder of subd. 2 formerly read: "as many days annually between the first day of October and the following June as the public school of the district in which such child resides, shall be in session during such period, as follows:"

§ 622. When a boy is required to attend evening school. 1. Every boy between fourteen and sixteen years of age, in a city of the first class or a city of the second class in possession of an employment certificate duly issued under the provisions of the labor law, who has not completed such course of study as is required for graduation from the elementary public schools of such city, and who does not hold either a certificate of graduation from the public elementary school or the pre-academic certificate issued by the regents or the certificate of the completion of an elementary course issued by the education department, shall attend the public evening schools of such city, or other evening schools offering an equivalent course of instruction, for not less than six hours each week, for a period of not less than sixteen weeks.[1]

2.[2] When the board of education in a city or district shall have established part-time and continuation schools or courses of instruction for the education of young persons between fourteen and sixteen years of age who are regularly employed in such city or district, said board of education may require the attendance in such schools or on such courses of instruction of any young person in such a city or district who is in possession of an employment certificate duly issued under the provisions of the labor law, who has not completed such courses of study as are required for graduation from the elementary public schools of such city or district, or equivalent courses of study in parochial or other elementary schools, who does not hold either a certificate of graduation from the public elementary school or a pre-academic certificate of the completion of the elementary course issued by the education department, and who is not otherwise receiving instruction approved by the board of education as equivalent to that provided for in the schools and courses of instruction established under the provisions of this act. The required attendance provided for in this paragraph shall be for a total of not less than thirty-six weeks per year, at the rate of not less than four and not more than eight hours per week, and shall be between the hours of eight o'clock in the morning and five o'clock in the afternoon of any working day or days.

3. The children attending such part-time or continuation schools

[1] Words "or upon trade school a period of eight hours per week for sixteen weeks in each school or calendar year," omitted.

[2] Remainder of section new.

as required in paragraph two of this section shall be exempt from the attendance on evening schools required in paragraph one of this section.

Amended to read as above by L. 1913, ch. 748. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 530, as renumbered and amended by L. 1909, ch. 409. Its derivation is given in the note to section 621, supra.

Section 622 of the Education Law of 1909 is now covered by section 454.

§ 623. Instruction elsewhere than at a public school. If any such child shall so attend upon instruction elsewhere than at a public school, such instruction shall be at least substantially equivalent to the instruction given children of like age at the public school of the city or district in which such child resides; and such attendance shall be for at least as many hours each day thereof as are required of children of like age at public schools; and no greater total amount of holidays or vacations shall be deducted from such attendance during the period such attendance is required than is allowed in such public school to children of like age. Occasional absences from such attendance, not amounting to irregular attendance in the fair meaning of the term, shall be allowed upon such excuses only as would be allowed in like cases by the general rules and practice of such public school.

This section was derived from Education Law of 1909, § 530, as renumbered and amended by L. 1909, ch. 409. Its derivation is given in the note to section 621, supra.

Section 623 of the Education Law of 1909 is now covered by sections 772, 774.

§ 624. Duties of persons in parental relation to children. Every person in parental relation to a child within the compulsory school ages and in proper physical and mental condition to attend school, shall cause such child to attend upon instruction, as follows:

1. In cities and school districts having a population of five thousand or above, every child between seven and sixteen years of age as required by section six hundred and twenty-one of this act unless an employment certificate shall have been duly issued to such child under the provisions of the labor law and he is regularly employed thereunder.

2. Elsewhere than in a city or school district having a population of five thousand or above, every child between eight and sixteen years of age, unless such child shall have received an employment certificate duly issued under the provisions of the labor law and is regularly employed thereunder in a factory or mercantile establishment, business or telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages, or unless such child shall have received the school record certificate issued under section six hundred and thirty of this act and is regularly employed elsewhere than in the factory or mercantile establishment, business or telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages.

This section was derived from Education Law of 1909, § 531, as renumbered and amended by L. 1909, ch. 409.

This section came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 4, as added by L. 1894, ch. 671, and amended by L. 1903, ch. 459, § 3, and L. 1907, ch. 585, § 2.

Section 624 of the Education Law of 1909 was omitted in the enactment of Education Law of 1910 (ch. 140).

Vaccination of school children: see PUBLIC HEALTH LAW, § 310.

Compulsory vaccination: see notes 1 Ann. Cas. 336, 10 Ann. Cas. 882, 14 Ann. Cas. 945, Ann. Cas 1912A 375.

What constitutes "proper physical condition."— Under the similar provisions of the former Compulsory Education Law, the Attorney General said: "I think it is a fair construction of the Compulsory Education Law to say that children who have not been vaccinated, etc., are not in a proper physical condition to attend school, as mentioned in the act. In any event, the provisions of the Health Law requiring vaccination, and excluding children from the public schools until they have been vaccinated as a penalty for failure to comply therewith, would seem to furnish a defense to an attempt at prosecution under the Compulsory Education Law for failure to attend school." Op. Atty.-Gen. (1901) 194.

Power to exclude unvaccinated children from school.— The provisions of the Public Health Law excluding children who have not been vaccinated against smallpox from the public schools is a proper exercise of the police power of the state and is not an unreasonable restriction upon a child's right to attend school nor does it violate any of the constitutional "guarantees for the protection of the rights, privileges and liberties of the citizen." Jacobson v. Massachusetts, (1905) 197 U. S. 11, 25 S. Ct. 358, 49 U. S. (L. ed.) 643, 3 Ann. Cas. 765; People v. Ekerold, (1914) 211 N. Y. 386, 105 N. E. 670, Ann. Cas. 1915C 552, L. R. A. 1915D 223, affirming 160 App. Div. 930, 145 N. Y. S. 1137; Viemeister v. White, (1904) 179 N. Y. 235, 72 N. E. 97, 103 A. S. R. 859, 1 Ann. Cas. 334, 70 L. R. A. 796, affirming 88 App. Div. 44, 84 N. Y. S 712.

Parents' duty with regard to vaccination.— The law requiring vaccination of children in the public schools is a proper one. When a father sends his child to school unvaccinated, and the school authorities refuse to allow said unvaccinated child to attend school, and the father refuses to permit vaccination and thereafter does not cause said child to attend on instruction as provided in this section he is subject to the penalty provided in the following

section. People v. Ekerold, (1914) 211 N. Y. 386, 105 N. E. 670, Ann. Cas. 1915C 552, L. R. A. 1915D 223, affirming 160 App. Div. 930, 145 N. Y. S. 1137.

Sending unvaccinated children to school.—The fact that a parent who has refused to have his children vaccinated, sent them to school several times where they were denied admission does not furnish a defense in a criminal action for failure to comply with the provisions of this section. People v. McIlwain, (1915) 151 N. Y. S. 366; Shappee v. Curtis, (1911) 142 App. Div. 155, 127 N. Y. S. 33.

Testimony of physician to show dangers of vaccination.— In a criminal prosecution against a parent for failure to perform his parental duty in accordance with this section, it appeared that the child in question had been excluded from school because it had not been vaccinated as prescribed by section 310 of the Public Health Law. It was held that testimony of a physician tending to prove that "vaccination was dangerous and the law unjust" was inadmissible. People v. McElwain, (1915) 151 N. Y. S. 366.

§ 625. Penalty for failure to perform parental duty. A violation of section six hundred and twenty-four shall be a misdemeanor, punishable for the first offense by a fine not exceeding five dollars, or five days' imprisonment, and for each subsequent offense by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment. Courts of special session and police magistrates shall, subject to removal as provided in sections fifty-seven and fifty-eight of the code of criminal procedure, have exclusive jurisdiction in the first instance to hear, try and determine charges of violations of this section within their respective jurisdictions.

This section was derived from Education Law of 1909, § 531. Its derivation is given in the note to section 624, supra.

Section 625 of the Education Law of 1909 is now covered by section 773.

Punishment of parents, guardians or other persons for contributing to delinquency of children: see PENAL LAW, § 494.

Probable cause in action against attendance officer for malicious prosecution. — In an action for malicious prosecution it appeared that the plaintiff was the mother of a child ten years old who was excluded from the public school because the plaintiff refused to permit her to be vaccinated; that "the plaintiff insisted upon the admission of the child into the school and continued to send her to the schoolhouse, and that the school officers persisted in their refusal to admit or receive her until vaccinated;" that thereafter the defendant who was an attendance officer "laid written information before a police justice in which he stated, among other things, that the plaintiff had not caused the child to attend upon instruction as required by law; that the child had been absent from instruction nine days between November 11 and November 23, 1908, without legal excuse therefor, and that she had not presented to the school authorities proof by affidavit that she was unable to compel the child to so attend. It also appeared that acting upon this information a warrant was issued by the justice to the defendant, who thereupon arrested the plaintiff and she was thereafter discharged." Under these circumstances it was held that want of probable cause was not shown as the evidence proved clearly that the plaintiff had violated the provisions of this section. Shappee v. Curtis, (1911) 142 App. Div. 155, 127 N. Y. S. 33. And see supra, section 624.

§ 626. Unlawful employment of children and penalty therefor. It shall be unlawful for any person, firm or corporation:

1. To *employe any child under fourteen years of age, in any business or service whatever, for any part of the term during which the public schools of the district or city in which the child resides are in session.

2. To employ, elsewhere than in a city of the first class or a city of the second class, in a factory or mercantile establishment, business or telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages, any child between fourteen and sixteen years of age who does not at the time of such employment present an employment certificate duly issued under the provisions of the labor law, or to employ any such child in any other capacity who does not at the time of such employment present a school record certificate as provided in section six hundred and thirty of this chapter.

3. To employ any child between fourteen and sixteen years of age in a city of the first class or a city of the second class who does not, at the time of such employment, present an employment certificate, duly issued under the provisions of the labor law.

This section was derived from Education Law of 1909, § 532, as renumbered and amended by L. 1909, ch. 409. It came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 5, as added by L. 1894, ch. 671, as amended by L. 1903, ch. 459, § 4; L. 1905, ch. 280, § 1; L. 1907, ch. 103, § 2; L. 1907, ch. 585, § 4.

Section 626 of the Education Law of 1909 is now covered by section 775.

Certain employment of children prohibited: see PENAL LAW, § 485.

Employment of minors in factories: see LABOR LAW, § 70 et seq.

Employment of children in any mercantile or other business: see LABOR LAW, § 162 et seq.

Employment of children in street trades: see LABOR LAW, § 220 et seq.

Constitutionality of subdivision 1.—Subdivision 1 of this section is not unconstitutional as "an unwarranted, illegal and unconstitutional deprivation of the liberties of the" employer but is a valid exercise of the police power of the state. New York v. Chelsea Jute Mills, (1904) 43 Misc. 266, 88 N. Y. S. 1085.

Applicability of the Labor Law.—Subdivision 1 of this section should be read in connection with Labor Law, relating to the employment of children under the age of fourteen years in factories. Op. Atty.-Gen. (1905) 381.

Character of employment.—Although the employment of children under fourteen years of age "in sheds devoid of machinery, in the open air, unconnected with a factory, and not subject to the discipline and hours governing factory employment" may be legal under Labor Law, such employment may nevertheless violate subdivision 1 of this section. Op. Atty.-Gen. (1905) 381.

Good faith as a defense.— Under subdivision 1 of this section the employer acts at his peril and when sued for the statutory penalty he cannot interpose as a defense that he acted in good faith in employing the child, having

* So in original.

reason to believe her to be of the required age because of her statement and an affidavit of her father, and that he did not intend to violate the Act. New York v. Chelsea Jute Mills, (1904) 43 Misc. 266, 88 N. Y. S. 1085.

§ 627. Employer must display record certificate and evening part-time or continuation school[2] certificate. The employer of any child between fourteen and sixteen years of age in a city[2] or district[3] shall keep and shall display in the place where such child is employed, the employment certificate and also his evening, part-time or continuation[4] school certificate issued by the school authorities of said city or district[3] or by an authorized representative of such school authorities, certifying that the said child[5] is regularly in attendance at an evening, part time or *continuance[4] school of said city as provided in section six hundred and thirty-one of this chapter.

Amended to read as above by L. 1913, ch. 748. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 532, as renumbered and amended by L. 1909, ch. 409. Its derivation is given in the note to section 626, supra. The amendment by L. 1909, ch. 409, divided the subject matter of section 533 as it was enacted in the Education Law of 1909, and distributed it in sections 532 and 533.

§ 628. Punishment for unlawful employment of children. Any person, firm, or corporation, or any officer, manager, superintendent or employee acting therefor, who shall employ any child contrary to the provisions of sections six hundred and twenty-six and six hundred and twenty-seven[6] hereof shall be guilty of a misdemeanor, and the punishment therefor shall be for the first offense a fine of not less than twenty dollars nor more than fifty dollars; for a second and each subsequent offense, a fine of not less than fifty dollars nor more than two hundred dollars.

Amended to read as above by L. 1913, ch. 748. The change is indicated in the footnote.

This section was derived from Education Law of 1909, § 533, as renumbered and amended by L. 1909, ch. 409. The amendment by L. 1909, ch. 409, divided the subject matter of former section 533 and distributed it in sections 532 and 533. This section came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 5, as added by L. 1894, ch. 671, as amended by L. 1903, ch. 459, § 4; L. 1905, ch. 280, § 1; L. 1907, ch. 103, § 2; L. 1907, ch. 585, § 4.

[1] Words "part-time or continuation school," new.
[2] Words "of the first class or a city of the second class," omitted.
[3] Words "or district," new.
[4] Words "part-time or continuation," new.
[5] Word "child" substituted for word "boy."
[6] Words "and six hundred and twenty-seven," new.
* So in original.

Who may bring action for penalty.— Under the provisions of the former Compulsory Education Law, L. 1894, ch. 671, § 65, the attorney-general ruled that the treasurer of a city was "a trustee of an express trust, in that the moneys forfeited, when paid to him, is paid for the use and benefit of the public schools of the city," and he consequently could bring an action to recover the penalty prescribed for the offense against this law. Op. Atty.-Gen. (1895) 202.

§ 629. Teachers must keep record of attendance. An accurate record of the attendance of all children between seven and sixteen years of age shall be kept by the teacher of every school, showing each day by the year, month, day of the month and day of the week, such attendance, and the number of hours in each day thereof; and each teacher upon whose instruction any such child shall attend elsewhere than at school, shall keep a like record of such attendance. Such record shall, at all times, be open to the attendance officers or other person duly authorized by the school authorities of the city or district, who may inspect or copy the same; and every such teacher shall fully answer all inquiries lawfully made by such authorities, inspectors, or other persons, and a willful neglect or refusal so to answer any such inquiry shall be a misdemeanor.

This section was Educational Law of 1909, § 534, subd. 1, as renumbered and amended by L. 1909, ch. 409, which came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 6, as added by L. 1894, ch. 671, and amended by L. 1903, ch. 459, § 5.

§ 630. School record certificate. 1. A school-record certificate shall contain a statement certifying that a child has regularly attended the public schools, or schools equivalent thereto, or parochial schools, for not less than one hundred and thirty days during the twelve months next preceding his fourteenth birthday or during the twelve months next preceding his application for such school record, and that he is able to read and write simple sentences in the English language and has received during such period instruction in reading, writing, spelling, English grammar and geography and is familiar with the fundamental operations of arithmetic up to and including fractions, [1]and has completed the work prescribed for the first six years of the public elementary school, or school equivalent thereto, or parochial school, from which such school record is issued. Such record shall also give the date of birth and residence of the child, as shown on the school

[1] Remainder of sentence new.

records, and the name of the child's parents, guardian or custodian.

2. A teacher or superintendent to whom application shall be made for a school record certificate required under the provisions of the labor law shall issue a school record certificate to any child who, after due investigation and examination, may be found to be entitled to the same as follows:

a. In a city of the first class by the principal or chief executive of a school.

b. In all other cities and in school districts having a population of five thousand or more and employing a superintendent of schools, by the superintendent of schools only.

c. In all other school districts by the principal teacher of the school.

d. In each city or school district such certificate shall be furnished on demand to a child entitled thereto or to the board or commissioner of health.

Subd. 1 was amended to read as above by L. 1913, ch. 101. The change is indicated in the footnote.

This section was derived from Education Law of 1909, § 534. It came from Consolidated School Law, L. 1894, ch. 556, tit. 16, as added by L. 1894, ch. 671, and amended by L. 1907, ch. 585, § 3.

§ 631. Evening, part-time or continuation school certificate. The school authorities in a city or district, or officers designated by them, are hereby required to issue to each child lawfully in attendance at an evening, part-time or continuation school, an evening, part-time or continuation school certificate at least once in each month during the months said evening, part-time or continuation school is in session and at the close of the term of said evening, part-time or continuation school, provided that said child has been in attendance upon said evening school, for not less than six hours each week or upon said part-time or continuation school for not less than four hours each week, for such number of weeks as will, when taken in connection with the number of weeks such evening, part-time or continuation school respectively, shall be in session during the remainder of the current or calendar year, make up a total attendance on the part of said child in said evening school, of not less than six hours per week for a period of not less than sixteen weeks or in said part-time or continuation school, of not less than four hours per week for a period of not less than

thirty-six weeks. Such certificate shall state fully the period of time which the child to whom it is issued was in attendance upon such evening, part-time or continuation school.

Amended to read as above by L. 1913, ch. 748.

This section was Education Law of 1909, § 534, subd. 3, as renumbered and amended by L. 1909, ch. 409. This subdivision came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 5, as added by L. 1894, ch. 409, and amended by L. 1903, ch. 459, § 4.

§ 632. Attendance officers. 1. The school authorities of each city, union free school district, or common school district whose limits include in whole or in part an incorporated village, shall appoint and may remove at pleasure one or more attendance officers of such city or district, and shall fix their compensation and may prescribe their duties not inconsistent with this article and make rules and regulations for the performance thereof; and the superintendent of schools shall supervise the enforcement of this article within such city or school district.

2. The town board of each town shall appoint, subject to the written approval of the school commissioner of the district, one or more attendance officers, whose jurisdiction shall extend over all school districts in said town, and which are not by this section otherwise provided for, and shall fix their compensation, which shall be a town charge; and such attendance officers, appointed by said board, shall be removable at the pleasure of the school commissioner in whose commissioner district such town is situated.

This section was Education Law of 1909, § 535, as renumbered and amended by L. 1909, ch. 409. It came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 7, as added by L. 1894, ch. 671, and amended by L. 1896, ch. 606, § 3; L. 1903, ch. 459, § 6; L. 1905, ch. 280, § 2.

Reduction of salary of attendance officer.— The grant of power to the school authorities to fix the compensation of an attendance officer includes also the power to reduce his salary, under the well-recognized principle of law that "the compensation of an officer or appointee can be reduced by the body having power to fix or regulate it, unless such change is prohibited by statute or constitution." Black v. Board of Education, (1904) 92 N. Y. S. 118.

Extent of authority to arrest.— It seems that an attendance officer may arrest "habitual and incorrigible truants" and any time during the school term with or without a warrant. Op. Atty.-Gen. (1895) 144.

§ 633. Arrest of truants. 1. The attendance officer may arrest without a warrant any child between seven and sixteen years of age who is a truant from instruction upon which he is lawfully required to attend within the city or district of such attendance

officer. He shall forthwith deliver the child so arrested to a teacher from whom such child is then a truant, or, in case of habitual and incorrigible truants, shall bring them before a police magistrate for commitment to a truant school as provided in section six hundred and thirty-five.

2. The attendance officer shall promptly report such arrest and the disposition which he makes of such child, to the school authorities of the said city or district where such child is lawfully required to attend upon instruction.

3. A truant officer in the performance of his duties may enter, during business hours, any factory, mercantile or other establishment within the city or school district in which he is appointed and shall be entitled to examine employment certificates or registry of children employed therein on demand.

This section was Education Law of 1909, § 536 pt., as renumbered and amended by L. 1894, ch. 409.

This section came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 8, as added by L. 1894, ch. 671, and amended by L. 1903, ch. 459, § 7; L. 1905, ch. 311, § 1.

What constitutes truancy.— A child, who at the time of an attempted arrest by an attendance officer was in the presence of his father and absent from school with the father's permission to the knowledge of the officer, was not a truant within the meaning of this section. Reynolds v. Board of Education, (1898) 33 App. Div. 88, 53 N. Y. S. 75.

Liability for acts of attendance officer.— "The rule of respondent superior does not apply to the relations between the board of education and the attendance officer; that rule is based upon the right which the employer has to select his servants, to discharge them if not competent or skillful or well behaved, and to direct and control them while in his employ. . . . The duties of the attendance officer are prescribed by the statute and not by the board of education, although the board may make regulations governing his conduct to some extent as the statute provides." It was therefore held that a board of education was not liable for the death of a child caused by the efforts of the officer in attempting to make an arrest. Reynolds v. Board of Education, (1898) 33 App. Div. 88, 53 N. Y. S. 75. To the same effect see Rhall v. Board of Education, (1899) 40 App. Div. 412, 57 N. Y. S. 977.

§ 634. Interference with attendance officer. Any person interfering with an attendance officer in the lawful discharge of his duties and any person owning or operating a factory, mercantile or other establishment who shall refuse on demand to exhibit to such attendance officer the registry of the children employed or the employment certificate of such children shall be guilty of a misdemeanor.

This section was Education Law of 1909, § 536, subd. 3 pt., which came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 8, as added by L. 1894, ch. 671, and amended by L. 1903, ch. 459, § 7; L. 1905, ch. 311, § 1.

§ 635. Truant schools. 1. The school authorities of any city or school district may establish schools, or set apart separate rooms in public school buildings, for children between seven and sixteen years of age, who are habitual truants from instruction upon which they are lawfully required to attend, or who are insubordinate or disorderly during their attendance upon such instruction, or irregular in such attendance. Such school or room shall be known as a truant school; but no person convicted of crimes or misdemeanors, other than truancy, shall be committed thereto.

2. School authorities may provide for the confinement, maintenance and instruction of such truants in such schools; and they, or the superintendent of schools in any city or school district, may, after reasonable notice to such child and the persons in parental relation to such child, and an opportunity for them to be heard, and with the consent in writing of the persons in parental relation to such child, order such child to attend such school, or to be confined and maintained therein, under such rules and regulations as such authorities may prescribe, for a period not exceeding two years; but in no case shall a child be so confined after he is sixteen years of age.

3. Such authorities may order such a child to be confined and maintained during such period in any private school, orphans' home or similar institution controlled by persons of the same religious faith as the persons in parental relation to such child, and which is willing and able to receive, confine and maintain such child, upon such terms as to compensation as may be agreed upon between such authorities and such private school, orphans' home or similar institution.

4. If the person in parental relation to such child shall not consent to either of such orders said person shall be proceeded against in court under section six hundred and twenty-five of this chapter by the school authorities or such officer as they may designate. In case the person in parental relation to such child establishes to the satisfaction of the court that such child is beyond his control such child shall be proceeded against as a disorderly person, and upon conviction thereof, if the child was lawfully required to attend a public school, the child shall be sentenced to be confined and maintained in such truant school for a period not exceeding two years; or if such child was lawfully required to attend upon instruction otherwise than at a public school, the

child may be sentenced to be confined and maintained for a period not exceeding two years in such private school, orphans' home or other similar institutions, if there be one, controlled by persons of the same religious faith as the persons in parental relation to such child, which is willing and able to receive, confine and maintain such child for a reasonable compensation. Such confinement shall be conducted with a view to the improvement and to the restoration, as soon as practicable, of such child to the institution elsewhere, upon which he may be lawfully required to attend.

5. The authorities committing any such child, and in cities and districts having a superintendent of schools such superintendent shall have authority, in his discretion, to parole at any time any truant so committed by them.

6. Every child lawfully suspended from attendance upon instruction for more than one week, shall be required to attend such truant school during the period of such suspension.

7. The school authorities of any city or school district, not having a truant school, may contract with any other city or district having a truant school, for the confinement, maintenance and instruction therein of children whom such school authorities might require to attend a truant school, if there were one in their own city or district.

8. Industrial training shall be furnished in every such truant school.

9. The expense attending the commitment and cost of maintenance of any truant residing in any city, or district, employing a superintendent of schools shall be a charge against such city, or district, and in all other cases shall be a county charge.

This section is, substantially, Education Law of 1909, § 537, as renumbered and amended by L. 1909, ch. 409. It came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 9, as added by L. 1894, ch. 671, and amended by L. 1896, ch. 606, § 5; L. 1903, ch. 459, § 8; L. 1905, ch. 280, § 3.

Duty to receive truants.— The provisions of subdivision 3 of this section do not render it incumbent upon the House of Good Shepherd of Utica, N. Y., incorporated under L. 1848, ch. 319, to receive all truant children which are committed to it. Op. Atty.-Gen. (1907) 404.

Who may be committed as truant.— A male child under sixteen years of age may not be lawfully committed to the State Agricultural and Industrial School upon a specific charge of truancy unless he be a poor person. Op. Atty.-Gen. (1914) 400.

Truants as city charges.— In the city of Buffalo truant children are city charges. St. Agnes Training School v. Erie County, (1910) 68 Misc. 648, 124 N. Y. S. 984.

Liability for injury to truant.— It has been held that the board of education of New York city was not liable for an injury to an inmate of the New

York Parental School, incurred when at work and while confined in said school; as the status of an inmate of such an institution is analogous to that of a convict, and the relation of master and servant, nor that of employer and employee does not exist. Ackley v. Board of Education, (1916) 159 N. Y. S. 249.

§ 636. Enforcement of law and withholding the state moneys by commissioner of education. 1. The commissioner of education shall supervise the enforcement of this law and he may withhold one-half of all public school moneys from any city or district, which, in his judgment, wilfully omits and refuses to enforce the provisions of this article, after due notice, so often and so long as such wilful omission and refusal shall, in his judgment, continue.

2. If the provisions of this article are complied with at any time within one year from the date on which said moneys were withheld, the moneys so withheld shall be paid over by said commissioner of education to such district or city, otherwise forfeited to the state.

This section was Education Law, § 538, as renumbered and amended by L. 1894, ch. 409. It came from Consolidated School Law, L. 1894, ch. 556, tit. 16, § 10, as added by L. 1894, ch. 671, and amended by L. 1895, ch. 908, § 1; L. 1905, ch. 280, § 4.

ARTICLE 24*

School Census

Section 650. School census in cities of the first class, except the city of New York.
651. School census in cities not of the first class.
652. School census in school districts.
653. Penalty for withholding information.
654. Payment of expenses.

§ 650. School census in cities of the first class, except the city of New York.[1] A permanent census board is hereby established in each city of the first class, except the city of New York.[1] In the city of New York provision shall be made by the board of education for taking a school census in connection with the work of enforcing the compulsory education law.[2] Such permanent census[3] board shall consist of the mayor, the superintendent of schools, the police commissioner or officer performing duties similar to those of a police commissioner. The mayor shall be the chairman of such board. Such board shall have power to make such rules and regulations as may be necessary to carry out the provisions of this article. Such board shall have power to appoint a secretary and such clerks and other employees as may be necessary to carry out the provisions of this article and to fix the salaries of the same. Such board shall ascertain through the police force, the residences and employments of all persons between the ages of four and eighteen years residing within such cities and shall report thereon from time to time to the school authorities of such cities. Under the regulations of such board, during the month of October, nineteen hundred and nine, it shall be the duty of the police commissioners in such[4] cities of the first class to cause a census of the children of their respective cities to be taken. Thereafter such census shall be amended from day to day by the police, precinct by precinct, as changes of residence occur among the children of such cities within the ages

* This article was article 4 of the Education Law of 1909. Article 24 of the Education Law of 1909 was, "Teachers' Institutes."

1 Words "except the city of New York," new.

2 Preceding sentence new.

3 Words "permanent census," new.

4 Formerly "the."

prescribed in this article and as other persons come within the ages prescribed herein and as other persons within such ages shall become residents of such cities, so that said board shall always have on file a complete census of the names and residences of the children between such ages and of the persons in parental relation thereto. It shall be the duty of persons in parental relation to any child residing within the limits of said cities of the first class to report at the police station house of the precinct within which they severally reside, the following information:

1. Two weeks before any child becomes of the compulsory school age the name of such child, its residence, the name of the person or persons in parental relation thereto, and the name and location of the school to which such child is sent as a pupil.

2. In case a child of compulsory school age is for any cause removed from one school and sent to another school, or sent to work in accordance with the labor law, all the facts in relation thereto.

3. In case the residence of a child is removed from one police precinct to another police precinct, the new residence and the other facts required in the two preceding subdivisions.

4. In case a child between the ages of four and eighteen becomes a resident of one of said cities of the first class for the first time the residence and such other facts as the census board shall require. Such census shall include all persons between the ages of four and eighteen years, the day of the month and the year of the birth of each of such persons, their respective residences by street and number, the names of their parents or guardians, such information relating to illiteracy and to the enforcement of the law relating to child labor and compulsory education as the school authorities of the state and of such cities shall require and also such further information as such authorities shall require.

Amended to read as above by L. 1914, ch. 480. The changes are indicated in the footnote. Section 3 of that chapter abolished the permanent census board of New York city. Section 650 was derived from Educational Law of 1909, § 1000, which came from L. 1895, ch. 550, § 1.

Conclusiveness of school census or enumeration made by proper authorities: see note Ann. Cas. 1913B 1270.

Selection of census enumerators.— Where the former superintendent of public instruction was empowered and required to take a census of the school children in certain towns and cities, he had the authority to select the enumerators therefor, who were to be paid by the several towns and cities. Op. Atty.-Gen. (1897) 284.

§ 651. School census in cities not of the first class. A permanent census board may be established in any city not of the first class, in accordance with the provisions of this article. If a census board shall not be established in such cities, then, during the month of October, nineteen hundred and nine, and in the month of October every fourth year thereafter, the school authorities of every city, not a city of the first class, shall take a census of the children of their respective cities. Such census shall include the information required from the cities of the first class as provided in section six hundred and fifty of this chapter.

This section was Education Law of 1909, § 1001, which came from L. 1895, ch. 550, § 2.

§ 652. School census in school districts. The board of trustees of every school district shall annually on the thirtieth day of August cause a census of all children between the ages of five and eighteen years to be taken in their respective school districts. Such census shall include the information required from cities as provided in this article.

This section was Education Law of 1909, § 1002, which came from L. 1895, ch. 550, § 3.

§ 653. Penalty for withholding information. A parent, guardian or other person having under his control or charge a child between the ages of four and eighteen years who withholds or refuses to give information in his possession relating to such child and required under this article, or any such parent, guardian or other person who gives false information in relation thereto, shall be liable to and punished by fine not exceeding twenty dollars or by imprisonment not exceeding thirty days.

This section was Education Law of 1909, § 1003, which came from L. 1895, ch. 550, § 3.

§ 654. Payment of expenses. The money required for the purpose of carrying this article into effect shall be paid by the cities and school districts respectively, included in the provisions of this article, but, in cities in which a permanent census board as provided in section six hundred and fifty of this chapter is not

established and maintained, except the city of New York,[1] and in school districts, such moneys shall be paid for the services rendered in the taking of the school census, on the certificate of the state commissioner of education that such census has been satisfactorily taken.

Amended to read as above by L. 1914, ch. 480. The change is indicated in the footnote.

This section was derived from Education Law of 1909, § 1004, which came from L. 1895, ch. 550, § 4.

[1] Words "except the city of New York," new.

ARTICLE 25*

TEXT-BOOKS

Section 670. Power to designate text-books.
671. Requisites for change.
672. Penalty for violation.
673. Free text-books in union free school districts.

§ 670. Power to designate text-books. 1. In the several cities and union free school districts of the state, boards of education or such body or officer as perform the functions of such boards, shall designate text-books to be used in the schools under their charge.

2. In the common school districts in the state the text-books used in the schools therein shall be designated at an annual school meeting by a two-thirds vote of all the legal voters present and voting at such school meeting.

This section was, substantially, Education Law of 1909, § 580, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 9. The report of the Board of Statutory Consolidation (1907) at page 1170 refers to certain changes made by the board as follows: "'Village' omitted for the reason that there is no village board of education. If the district and village boundaries are coterminous the board is the board of the district and in no wise the board of the village."

Section 670 of the Education Law of 1909 is now covered by section 823.

Statutory regulation of text-books used in public schools see note Ann. Cas. 1912B 476. *Power of legislature to prescribe subjects to be taught in public schools:* see note 47 L. R. A. (N. S.) 200. *Power of parent to select course of study or studies for child in public school:* see note 19 Ann. Cas. 1192.

§ 671. Requisites for change. 1. When a text-book shall have been designated for use in a union free school district or city as provided in subdivision one of the preceding section, it shall not be lawful to supersede such text-book by any other book within a period of five years from the time of such designation except upon a three-fourths vote of the board of education, or of such body or officer as performs the function of such board.

2. When a text-book shall have been designated in any common school district as provided in subdivision two of the preceding section it shall not be lawful to supersede such text-book except upon

* This article was article 22 of the Education Law of 1909. Article 25 of the Education Law of 1909 was, "Training Classes."

a three-fourths vote of the legal voters present and voting upon such proposition at an annual meeting of such district.

This section was derived from Education Law of 1909, § 581, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 10. Section 671 of the Education Law of 1909 is now covered by section 824.

§ 672. Penalty for violation. Any person violating any of the provisions of this article shall be liable to a penalty of not less than fifty dollars nor more than one hundred dollars for every such violation, to be sued for by any taxpayer of the school district, and recovered before any justice of the peace and when collected, to be paid to the collector or treasurer for the benefit of said school district.

This section was, substantially, Education Law of 1909, § 582, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 11. Section 672 of the Education Law of 1909 is now covered by section 825.

§ 673. Free text-books in union free school districts. 1. The qualified voters of any union free school district present at any annual school meeting or at any special school meeting duly and legally called for that purpose, shall have power, by a majority vote, to be ascertained by taking and recording the ayes and noes, to vote a tax for the purchase of all text-books used, or to be used, in the schools of the district.

2. If such tax shall be voted it shall be the duty of the board of education of such district, within ninety days thereafter, to purchase and furnish free text-books to all the pupils attending the schools in such district. Such board of education shall have power to establish such rules and regulations concerning the use by the pupils of such text-books, and the care, preservation and custody thereof as it shall deem necessary.

This section was Education Law of 1909, § 583, which came from Consolidated School Law, L. 1894, ch. 556, tit. 8, § 13 pt., as added by L. 1897, ch. 195, § 1. Section 673 of the Education Law of 1909 is now covered by section 826.

Power of school authorities to purchase text-books: see note 45 L. R. A. (N. S.) 972.

ARTICLE 26*

Physiology and Hygiene

Section 690. Instruction regarding nature of alcoholic drinks.
691. Enforcement of last section.

§ 690. Instruction regarding nature of alcoholic drinks. 1. The nature of alcoholic drinks and other narcotics and their effects on the human system shall be taught in connection with the various divisions of physiology and hygiene, as thoroughly as are other branches in all schools under state control, or supported wholly or in part by public money of the state, and also in all schools connected with reformatory institutions.

2. All pupils in the above-mentioned schools below the second year of the high school and above the third year of school work computing from the beginning of the lowest primary, not kindergarten, year, or in corresponding classes of ungraded schools, shall be taught and shall study this subject every year with suitable text-books in the hands of all pupils, for not less than three lessons a week for ten or more weeks, or the equivalent of the same in each year, and must pass satisfactory tests in this as in other studies before promotion to the next succeeding year's work; except that, where there are nine or more school years below the high school, the study may be omitted in all years above the eighth year and below the high school, by such pupils as have passed the required tests of the eighth year.

3. In all schools above-mentioned, all pupils in the lowest three primary, not kindergarten, school years or in corresponding classes in ungraded schools shall each year be instructed in this subject orally for not less than two lessons a week for ten weeks, or the equivalent of the same in each year, by teachers using text-books adapted for such oral instruction as a guide and standard, and such pupils must pass such tests in this as may be required in other studies before promotion to the next succeeding year's work. Nothing in this article shall be construed as prohibiting or requiring the teaching of this subject in kindergarten schools.

4. The local school authorities shall provide needed facilities

* This article was article 30 of the Education Law of 1909. Article 26 of the Education Law of 1909 was, "Normal Schools; State Normal College."

and definite time and place for this branch in the regular courses of study.

5. The text-books in the pupils' hands shall be graded to the capacities of fourth year, intermediate, grammar and high school pupils, or to corresponding classes in ungraded schools. For students below high school grade, such text-books shall give at least one-fifth their space, and for students of high school grade, shall give not less than twenty pages to the nature and effects of alcoholic drinks and other narcotics. This subject must be treated in the text-books in connection with the various divisions of physiology and hygiene, and pages on this subject in a separate chapter at the end of the books shall not be counted in determining the minimum. No text-book on physiology nor conforming to this article shall be used in the public schools.

6. All regents' examinations in physiology and hygiene shall include a due proportion of questions on the nature of alcoholic drinks and other narcotics, and their effects on the human system.

This section was Education Law of 1909, § 760, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 19, as amended by L. 1895, ch. 1041, § 1; L. 1896, ch. 901, § 1.

§ 691. Enforcement of last section. 1. In all normal schools, teachers' training classes and teachers' institutes, adequate time and attention shall be given to instruction in the best methods of teaching this branch, and no teacher shall be licensed who has not passed a satisfactory examination in the subject and the best methods of teaching it. On satisfactory evidence that any teacher has wilfully refused to teach this subject, as provided in this article, the commissioner of education shall revoke the license of such teacher.

2. No public money of the state shall be apportioned by the commissioner of education or paid for the benefit of any city until the superintendent of schools therein shall have filed with the treasurer or chamberlain of such city an affidavit, and with the commissioner of education a duplicate of such affidavit, that he has made thorough investigation as to the facts, and that to the best of his knowledge, information and belief, all the provisions of this article have been complied with in all the schools under his supervision in such city during the last preceding legal school year.

3. Nor shall any public money of the state be apportioned by

the commissioner of education or by school commissioners, or paid for the benefit of any school district, until the president of the board of trustees, or in the case of common school districts the trustee or some one member of the board of trustees, shall have filed with the school commissioner having jurisdiction an affidavit that he has made thorough investigation as to the facts and that to the best of his knowledge, information and belief, all the provisions of this article have been complied with in such district, which affidavit shall be included in the trustees' annual report.

4. It shall be the duty of every school commissioner to file with the commissioner of education an affidavit in connection with his annual report, showing all districts in his jurisdiction that have and those that have not complied with all the provisions of this article, according to the best of his knowledge, information and belief, based upon a thorough investigation by him as to the facts.

5. Nor shall any public money of the state be apportioned or paid for the benefit of any teachers' training class, teachers' institute or other school mentioned herein until the officer having jurisdiction or supervision thereof shall have filed with the commissioner of education an affidavit that he has made thorough investigation as to the facts and that to the best of his knowledge, information and belief, all the provisions of this article relative thereto have been complied with.

6. The principal of each normal school in the state shall at the close of each school year file with the commissioner of education an affidavit that all the provisions of this article applicable thereto have been complied with during the school year just terminated and until such affidavit shall be filed no warrant shall be issued by the commissioner of education for the payment by the treasurer of any part of the money appropriated for such school.

7. It shall be the duty of the commissioner of education to provide blank forms of affidavit required herein for use by the local school officers, and he shall include in his annual report a statement showing every school, city or district which has failed to comply with all the provisions of this article during the preceding school year.

8. On complaint by appeal to the commissioner of education by any patron of the schools mentioned in the last preceding

section or by any citizen that any provision of this article has not been complied with in any city or district, the commissioner of education shall make immediate investigation, and on satisfactory evidence of the truth of such complaint, shall thereupon and thereafter withhold all public money of the state to which such city or district would otherwise be entitled, until all the provisions of this article shall be complied with in said city or district, and shall exercise his power of reclamation and deduction under section four hundred and ninety-one of this chapter.

This section was derived from Education Law of 1909, § 761, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 20, as amended by L. 1895, ch. 104, § 1; L. 1896, ch. 901, § 1.

ARTICLE 26-A*

Discipline and Physical Training

Section 695. Instruction in physical training and kindred subjects.
696. Rules of regents.
697. State aid for teachers employed.

§ 695. Instruction in physical training and kindred subjects. After the first day of September, nineteen hundred and sixteen, all male and female pupils above the age of eight years in all elementary and secondary schools shall receive as part of the prescribed courses of instruction therein such physical training as the regents after conference with the military training commission may determine, during periods which shall average at least twenty minutes in each school day. Pupils above such age attending the public schools shall be required to attend upon such prescribed courses of instruction. The boards of education and trustees of the several cities and school districts in the state shall require the prescribed instruction to be given in such courses, within such cities and districts respectively, under the direction of the commissioner of education and in accordance with rules of the regents. Such boards of education or trustees, when the number of pupils in the city or district required to attend upon such instruction is sufficient, shall employ a competent teacher or teachers to give such instruction. The trustees or boards of education of two or more contiguous districts in the same supervisory district, when authorized or directed by the commissioner of education, may join in the employment of a competent teacher to give such instruction; and the salary of such teacher and the expenses incurred on account of such instruction shall be apportioned by the district superintendent among such districts according to the assessed valuation thereof, and as so apportioned shall be a charge upon each of such districts. Similar courses of instruction shall be prescribed and maintained in private schools in the state, and all pupils in such schools over eight years of age shall attend upon

* This article is new, being added to the Education Law of 1910 (ch. 140) by L. 1916, ch. 567.

such courses; and if such courses are not so established and maintained in any private school, attendance upon instruction in such school shall not be deemed substantially equivalent to instruction given to children of like ages in the public school or schools of the city or district in which the child resides.

Whenever the regents shall adopt recommendations of the military training commission in relation to the establishment in elementary and secondary schools of habits, customs and methods adapted to the development of correct physical posture and bearing, mental and physical alertness, self-control, disciplined initiative, sense of duty and spirit of co-operation under leadership, as provided in the military law, the regents shall prescribe and enforce such rules as may be necessary to carry into effect the recommendations so adopted.

New. Added by L. 1916, ch. 567.
The military training commission referred to in the last paragraph of this section was established by article 1-a of Military Law, L. 1916, ch. 556.

§ 696. Rules of regents. It shall be the duty of the regents to adopt rules determining the subjects to be included in courses of physical training provided for in this article, the period of instruction in each of such courses, the qualifications of teachers, the attendance upon such courses of instruction, and relating to carrying out the recommendations of the military training commission when adopted by the regents as provided for in this article.

New. Added by L. 1916, ch. 567.

§ 697. State aid for teachers employed. The commissioner of education, in the annual apportionment of state school moneys, shall apportion therefrom to each city and school district on account of courses of instruction as provided in this article, established and maintained in the schools of such city or district during the school year or any part thereof, a sum equal to one-half of the salary paid to each teacher on account of instruction given in such courses, but the entire amount apportioned on account of a single teacher during a school year shall not exceed six hundred dollars. Such apportionments shall be made out of moneys to be appropriated therefor, subject to the provisions of law relative to apportionments of public money to the public schools of the state. Such apportionments shall not be made unless such courses

of instruction shall be approved by the commissioner of education and the instruction therein shall meet the standards prescribed and conform to the provisions of this article and the rules of the regents of the university in respect thereto. If two or more districts shall jointly maintain such courses of instruction, the commissioner of education shall apportion a like amount on account of the salary paid to the teacher, which shall be apportioned to the school districts in accordance with the amount required to be paid by each district for the maintenance of such courses of instruction.

New. Added by L. 1916, ch. 567.

ARTICLE 27

The Flag

Section 710. Purchase and display of flag.
711. Rules and regulations.
712. Commissioner of education shall prepare program.
713. Military drill excluded.

§ 710. Purchase and display of flag. It shall be the duty of the school authorities of every public school in the several cities and school districts of the state to purchase a United States flag, flag-staff and the necessary appliances therefor, and to display such flag upon or near the public school building during school hours, and at such other times as such school authorities may direct.

This section was Education Law of 1909, § 700, which came from L. 1898, ch. 481, § 1.

Display of United States and state flags on capitol at Albany: see Public Buildings Law, § 4, subd. 5.

Display of foreign flags on public buildings: see Public Buildings Law, § 81.

Defacing or placing advertisements on United States or state flag: see Penal Law, § 1425, subd. 16.

Description of state flag: see State Law, § 70.

§ 711. Rules and regulations. The said school authorities shall establish rules and regulations for the proper custody, care and display of the flag, and when the weather will not permit it to be otherwise displayed, it shall be placed conspicuously in the principal room in the school-house.

This section was Education Law of 1909, § 701, which came from L. 1898, ch. 481, § 2.

§ 712. Commissioner of education shall prepare program. 1. It shall be the duty of the commissioner of education to prepare, for the use of the public schools of the state, a program providing for a salute to the flag and such other patriotic exercises as may be deemed by him to be expedient, under such regulations and instructions as may best meet the varied requirements of the different grades in such schools.

2. It shall also be his duty to make special provision for the observance in the public schools of Lincoln's birthday, Washington's birthday, Memorial day and Flag day, and such other legal

holidays of like character as may be hereafter designated by law when the legislature makes an appropriation therefor.

This section was derived from Education Law of 1909, § 702, which came from L. 1898, ch. 481, § 3.

§ 713. Military drill excluded. Nothing herein contained shall be construed to authorize military instruction or drill in the public schools during school hours.

This section was Education Law of 1909, § 704, which came from L. 1898, ch. 481, § 5.

The subject of military instruction or drill in the public schools was covered by L. 1916, ch. 566, which added article 1-a to the Military Law, "Military and Disciplinary Training."

ARTICLE 28

Fire Drills

Section 730. Duty to maintain drills.
731. Penalty for neglect.
732. Duty to instruct teachers.
733. Not applicable to colleges or universities.

§ 730. Duty to maintain drills. It shall be the duty of the principal or other person in charge of every public or private school or educational institution within the state, having more than one hundred pupils, or maintained in a building two or more stories high to instruct and train the pupils by means of drills, so that they may in a sudden emergency be able to leave the school building in the shortest possible time and without confusion or panic. Such drills or rapid dismissals shall be held at least once in each month.

This section was derived from Education Law of 1909, § 720. The words "or maintained in a building two or more stories high," in the first sentence, were added by Education Law of 1910 (ch. 140). Section 720 of the Education Law of 1909 came from L. 1901, ch. 201, § 1.

§ 731. Penalty for neglect. Neglect by any principal or other person in charge of any public or private school or educational institution to comply with the provisions of this article shall be a misdemeanor punishable at the discretion of the court by fine not exceeding fifty dollars; such fine to be paid to the pension fund of the local fire department where there is such a fund.

This section was Education Law of 1909, § 721, which came from L. 1901, ch. 201, § 2.

§ 732. Duty to instruct teachers. It shall be the duty of the board of education or school board or other body having control of the schools in any district or city to cause a copy of this article to be printed in the manual or handbook prepared for the guidance of teachers, where such manual or handbook is in use or may hereafter come into use.

This section was Education Law of 1909, § 722, which came from L. 1901, ch. 201, § 3.

§ 733. Not applicable to colleges or universities. The provisions of this article shall not apply to colleges or universities.

This section was Education Law of 1909, § 723, which came from L. 1901, ch. 201, § 4.

ARTICLE 29

Arbor Day

Section 750. Arbor day.
751. Manner of observance.
752. Prescribed course of exercises.

§ 750. Arbor day. The commissioner of education shall designate by proclamation, annually, the day to be observed as Arbor day.

Amended to read as above by L. 1916, ch. 220. Before the amendment the date of Arbor day was the Friday following the first day of May. This section was Education Law of 1909, § 740, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 44.

§ 751. Manner of observance. It shall be the duty of the authorities of every public school in this state to assemble the pupils in their charge on that day in the school building, or elsewhere, as they may deem proper, and to provide for and conduct, under the general supervision of the city superintendent or the school commissioner, or other chief officers having the general oversight of the public schools in each city or district, such exercises as shall tend to encourage the planting, protection and preservation of trees and shrubs, and an acquaintance with the best methods to be adopted to accomplish such results.

This section was Education Law of 1909, § 741, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 45.

§ 752. Prescribed course of exercises. The commissioner of education may prescribe from time to time a course of exercises and instruction in the subjects hereinbefore mentioned, which shall be adopted and observed by the public school authorities on Arbor day. Upon receipt of copies of such course sufficient in number to supply all the schools under their supervision, the school commissioner or city superintendent aforesaid shall promptly provide each of the schools under his charge with a copy, and cause it to be observed.

This section was Education Law of 1909, § 742, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 46.

Section 743 of the Education Law, relating to "annual appropriation," was omitted in the enactment of Education Law of 1910 (ch. 140).

ARTICLE 30*

TEACHERS' INSTITUTE

Section 770. Duties of commissioner of education regarding teachers' institutes.
771. Duties of school commissioners.
772. Schools must be closed.
773. Penalty for failure to attend or to close schools.
774. Teachers must attend; entitled to salaries.
775. Payment of expenses.

§ 770. Duties of commissioner of education regarding teachers' institutes. It shall be the duty of the commissioner of education:

1. To appoint a teachers' institute once in each year in each school commissioner district of the state, for the benefit and instruction of the teachers in the public schools, and of such as intend to become teachers, with special reference to the presentation of subjects relating to the principles of education and methods of instruction in the various branches of study pursued in the schools. After consultation with the school commissioners, the said commissioner of education shall have power to determine the duration of each institute and to designate the time and place of holding the same.

2. To employ suitable persons, at a reasonable compensation, to supervise and conduct the institutes, and, in his discretion, to provide for such additional instruction as he may deem advisable and for the best interest of the schools.

3. To appoint in his discretion an institute for two or more school commissioner districts.

4. To establish such regulations for the government of institutes as he may deem best; and he may establish such regulations in regard to certificates of qualification or recommendation which may be issued by school commissioners as will, in his judgment, furnish incentives and encouragement to teachers to attend the institutes.

5. To visit the institutes, or cause them to be visited by representatives of the education department, for the purpose of exam-

* This article was article 24 of the Education Law of 1909. Article 30 of the Education Law of 1909 was "Physiology and Hygiene."

ining into the course and character of instruction given, and of rendering such assistance as he may find expedient.

This section was Education Law of 1909, § 620, which came from Consolidated School Law, L. 1894, ch. 556, tit. 10, § 1.

Additional compensation to institute conductors.— Conductors of teachers' institutes "employed at an annual salary may not lawfully receive additional compensation for services rendered as summer institute instructors." Op. Atty.-Gen. (1904) 304.

§ 771. **Duties of school commissioners.** It shall be the duty of every school commissioner, subject always to the advice and direction of the commissioner of education:

1. To notify all teachers, trustees, boards of education and others known to him who may desire to become teachers under his jurisdiction, of the time when and the place where the institute will be held.

2. To make all necessary arrangements for holding the institute when appointed; see that a suitable room is provided; attend to all necessary details connected therewith; assist the conductor in organization; keep a record of all teachers in attendance and notify the trustees of the number of days attended by the teachers of the various districts, which shall be the basis of pay to such *teacher for attendance as hereafter provided.

3. To transmit to the commissioner of education at the close of each institute, in such form, and within such time, as such commissioner shall prescribe, a full report of the institute, including a list of all teachers in attendance, the number of days attended by each teacher, with such other information as may be required.

4. To present a full statement of all expenses incurred by him in carrying on the institute, with vouchers for all expenditures made, accompanying the same by an affidavit of the correctness of statements made and of accounts presented.

This section was, substantially, Education Law of 1909, § 621, which came from Consolidated School Law, L. 1894, ch. 556, tit. 10, § 2.

§ 772. **Schools must be closed.** 1. All schools in school districts and parts of school districts within any school commissioner district wherein an institute is held, not included within the boundaries of an incorporated city, except as herein provided, shall be closed during the time such institute shall be in session.

2. The closing of a school within the school commissioner district wherein an institute shall be held, at which a teacher has

* So in original.

attended, shall not work a forfeiture of the contract under which such teacher was employed.

3. In all districts having a population of more than five thousand, and employing a superintendent whose time is exclusively devoted to the supervision of the schools therein, the schools may be closed or not at the option of the boards of education in such districts.

This section was Education Law of 1909, § 623 pt., which came from Consolidated School Law, L. 1894, ch. 556, tit. 10, § 4, as amended by L. 1897, ch. 512, § 5.

§ 773. Penalty for failure to attend or to close schools. Wilful failure on the part of a teacher to attend a teachers' institute as required, shall be sufficient cause for the revocation of such teachers' license, and a wilful failure on the part of trustees to close their schools during the holding of an institute as required, shall be sufficient cause for withholding the public moneys to which such districts would otherwise be entitled.

This section was derived from Education Law, § 625, which came from Consolidated School Law, L. 1894, ch. 556, tit. 10, § 6, as amended by L. 1896, ch. 264, § 17.

§ 774. Teachers must attend; entitled to salaries. 1. Any person under contract to teach in a school in any commissioner district, is required to attend an institute if one is held for that district, even though at the time of such institute the school is not in session, and shall be entitled to receive full salary for the actual time in attendance at such institute.

2. The trustees of every school district are hereby directed to give the teachers employed in their district the whole of the time, while an institute for the school commissioner district in which their school is located is in sesssion, for attendance thereat and shall make no deduction whatever from the salaries of such teachers for the time so spent.

This section was derived from Education Law of 1909, § 623 pt. It came from Consolidated School Law, L. 1894, ch. 556, tit. 10, § 4, as amended by L. 1897, ch. 512, § 5.

§ 775. Payment of expenses. The treasurer shall pay, on the warrant of the comptroller, to the order of any one or more of the school commissioners, such sum of money as the commissioner of education shall certify to be due to them for expenses in holding,

a teachers' institute; and upon the like warrant and certificate shall pay to the order of any persons employed by the commissioner of education as additional instructors to conduct, instruct, teach or supervise any such teachers' institute.

This section was Education Law of 1909, § 626, which came from Consolidated School Law, L. 1894, ch. 556, tit. 10, § 7.

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ARTICLE 31*

Training Classes

Section 790. Designation of schools for classes.
791. Regulations for classes.
792. Instruction free.
793. †School commissioners shall supervise and examine classes; teachers' certificates.
794. Teachers' training schools or classes under superintendents of schools.

§ 790. Designation of schools for classes. The commissioner of education shall designate the academies and union free schools in which training classes may be organized to give instruction in the science and practice of common school teaching. Such classes shall be distributed among the academies and high schools of the several school commissioner districts of the state and consideration shall be given to the number of school districts in each and the location and character of the institution designated.

This section was derived from Education Law of 1909, § 640. It came from Consolidated School Law, L. 1894, ch. 556, tit. 11, § 2.

§ 791. Regulations for classes. 1. Every academy and union school so designated shall instruct a training class of not less than ten nor more than twenty-five scholars, and every scholar admitted to such class shall continue under instruction not less than thirty-six weeks.

2. Whenever it shall be shown to the satisfaction of the commissioner of education that any pupil attending such classes has been prevented from attending the same for the full term of thirty-six weeks, or that for any reason satisfactory to such commissioner, said classes have not been held for the full term of thirty-six weeks or have been attended by less than ten members, such commissioner may excuse such default and allow to the trustees of the academy or union free school in which said classes have been instructed an equitable allowance proportionate to the number of pupils and period of instruction.

* This article was article 25 of the Education Law of 1909, "Training Classes and Training Schools." Article 31 of the Education Law of 1909 was, "Special Instruction by Pictorial or Graphic Reproduction."

† So in original.

3. The commissioner shall prescribe the conditions of admission to the classes, the course of instruction and the rules and regulations under which said instruction shall be given.

This section was derived from Education Law of 1909, § 641, as amended by L. 1909, ch. 406. It came from Consolidated School Law, L. 1894, ch. 556, tit. 11, § 3.

§ 792. Instruction free. Instruction shall be free to all scholars admitted to such classes, who have continued in them the length of time required by the preceding section.

This section was Education Law of 1909, § 642, which came from Consolidated School Law, L. 1894, ch. 556, tit. 11, § 6.

§ 793. School commissioners shall supervise classes. Each class organized in any academy or union school under appointment by the commissioner of education for the instruction in the science and practice of common school teaching, shall be subject to the visitation of the school commissioner of the district in which such academy or union school is situated; and it shall be the duty of said school commissioner to advise and assist the principals of said academies or union schools in the organization and management of said classes.

This section was derived from Education Law of 1909, § 644. It came from Consolidated School Law, L. 1894, ch. 556, tit. 11, § 7.

§ 794. Teachers' training schools or classes under superintendents of schools. The board of education or the public school authorities of any city or of any school district having a population of five thousand or more and employing a superintendent of schools, may establish, maintain, direct and control one or more schools or classes for the professional instruction and training of teachers in the principles of education and in the method of instruction for not less than two years.

This section was derived from Education Law of 1909, § 645. It came from L. 1895, ch. 1031, as amended by L. 1897, ch. 495, § 1.

ARTICLE 32*

Normal Schools; State Normal College

Section 810. Normal schools continued.
811. Local boards.
812. Powers of local boards.
813. Bond of treasurer.
814. Salary of secretary and treasurer.
815. Local boards shall have management of buildings and property.
816. Courses of study.
817. †Teachers' salaries, et cetera.
818. Commissioner may perform duties of defaulting local board.
819. Diplomas.
820. Requisites for admission; privileges and duties of pupils.
821. Practice departments in Fredonia school.
822. Special policemen.
823. Village or city may insure normal school property.
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831. Indian pupils on equality with others.
832. New York state normal college.
833. Board of trustees.
834. Contracts for the education of children, residing in a city or district, in which a state normal school is located.

§ 810. Normal schools continued. The state normal schools heretofore established at Brockport, Buffalo, Cortland, Fredonia,

* This article was article 26 of the Education Law of 1909. Article 32 of the Education Law of 1909 was, "Instruction in Drawing and in Vocal Music."

† So in original.

Geneseo, New Paltz, Oneonta, Oswego, Plattsburgh and Potsdam, are continued.

This section was Education Law of 1909, § 660, and was new matter. The report of the Board of Statutory Consolidation (1907) at page 1169 refers to this section as follows: "Besides the normal schools enumerated in this section and the New York State Normal College mentioned in § 680, there is a normal college in the city of New York and various training schools in various localities, which have no place here because maintained by local authorities. The normal school at Jamaica was transferred to the city of New York by L. 1905, ch. 524."

Constitutionality of act creating normal school.— Although an act providing for the establishment and maintenance of a normal school violated the state constitution in so far as it provided for the maintenance of the school out of the "common school fund," still the court refused to hold the entire act unconstitutional where the legislature had the requisite power to carry into effect the general scheme of the act and could provide another means of obtaining the requisite funds for the support of the school. The error had to do only with a matter of detail. Gordon v. Cornes, (1872) 47 N. Y. 608.

§ 811. Local boards. There shall continue to be a local board of each of said state normal schools, consisting of not less than three nor more than thirteen persons and the members thereof shall hold their offices until removed by the concurrent action of the chancellor of the university and the commissioner of education. A vacancy in any of said boards shall be filled by appointment by the commissioner of education.

This section was Education Law of 1909, § 661, which came from L. 1866, ch. 466, § 3 pt., as amended by L. 1897, ch. 224, § 1; 1901, ch. 492, § 1; L. 1866, ch. 466, § 8 pt., as amended by L. 1869, ch. 18, § 1.

§ 812. Powers of local boards. 1. Local boards shall have the immediate supervision and management of said schools, subject, however, to the general supervision of the commissioner of education and to his direction in all things pertaining to the school. Said local boards shall have power to appoint one of their number chairman, one secretary and another treasurer of the board. The secretary may also be treasurer.

2. A majority of each of said boards shall form a quorum for the transaction of business, and in the absence of any officer of the board, another member may be appointed pro tempore to fill his place and perform his duties.

3. It shall be the duty of such board to make and establish, and from time to time to alter and amend, such rules and regulations

for the government of such schools under their charge, respectively, as they shall deem best, which shall be subject to the approval of the commissioner of education.

4. They shall also severally transmit through the commissioner of education, and subject to his approval and in the form which he directs, a report to the legislature on the first day of January in each year, showing the condition of the school under their charge during the year next preceding, including, especially, an account in detail of their receipts and expenditures, which shall be duly verified by the oath or affirmation of their chairman and secretary.

This section was, substantially, Education Law of 1909, § 662 pt., which came from L. 1866, ch. 466, § 3 pt., as amended by L. 1897, ch. 224, § 1; L. 1901, ch. 492, § 1.

§ 813. Bond of treasurer. The treasurer shall give an undertaking to the people of the state for the faithful performance of his trust in an amount fixed by the commissioner of education. The undertaking shall be approved by said commissioner and filed in the office of the comptroller.

This section was Education Law of 1909, § 662 pt., which came from L. 1866, ch. 466, § 3 pt., as amended by L. 1897, ch. 224, § 1; L. 1901, ch. 492, § 1.

§ 814. Salary of secretary and treasurer. The secretary and the treasurer shall each be paid an annual salary to be fixed by the local board with the approval of the commissioner of education, but the aggregate amount of such salaries shall not exceed four hundred dollars.

This section was Education Law of 1909, § 662 pt., which came from L. 1866, ch. 466, § 3 pt., as amended by L. 1897, ch. 224, § 1; L. 1901, ch. 492, § 1.

§ 815. Local boards shall have management of buildings and property. The local boards of managers of the respective normal schools in this state shall have the custody, keeping and management of the grounds and buildings provided or used for the purposes of such schools, respectively, and other property of the state pertaining thereto, with power to protect, preserve and improve the same.

This section was Education Law of 1909, § 663, which came from L. 1880, ch. 348, § 1.

§ 816. Courses of study. It shall be the duty of the commissioner of education to prescribe the courses of study to be pursued in each of said schools.

This section and section 817 were derived from Education Law of 1909, § 664. They came from L. 1866, ch. 466, § 4.

§ 817. Teachers, salaries, et cetera. The commissioner of education shall determine the number of teachers to be employed in each normal school and the salary of such teachers. The employment of such teachers shall also be subject to his approval.

This section was derived from Education Law of 1909, § 664 pt. The source of that section is given in the note to § 816, supra.

Conditional approval by commissioner of education.— Inasmuch as the effect of this section is that both the engagement and removal of teachers is to be done by the concurrent act of the commissioner of education and the local school board, conditions attached by the commissioner to his approval of a teacher are inoperative in so far as they attempt to enlarge his powers with respect to removal. People v. Hyde, (1882) 89 N. Y. 11.

Discharge of teachers.— When the commissioner's approval is once given, the contract of employment is complete, and the teacher can only be discharged by the authority in whom the power to employ is vested, i. e., by the concurrent act of the local board and the commissioner. A writ of mandamus to compel the recognition of a teacher appointed by the commissioner without the sanction of the local board in place of one whom he had removed also without the board's sanction should not therefore be sustained People v. Hyde, (1882) 89 N. Y. 11.

§ 818. Commissioner may perform duties of defaulting local board. During such time as any local board shall fail or refuse to discharge any duty the commissioner of education is hereby authorized to discharge such duty of such local boards or any of their officers; and the acts of said commissioner of education in the premises shall be as valid and binding as if done by a competent local board or its officers, or with their co-operation.

This section was, substantially, Education Law of 1909, § 665, which came from L. 1866, ch. 466, § 8 pt., as added by L. 1869, ch. 18, § 1.

§ 819. Diplomas. The commissioner of education shall prepare suitable diplomas to be granted to the students of such school, who shall have completed one or more of the courses of study and discipline prescribed, and a diploma signed by him, the chairman and secretary of the local board and the principal of the school, shall be of itself a certificate of qualification to teach common schools.

This section was Education Law of 1909, § 666, which came from L. 1866, ch. 466, § 6.

§ 820. Requisites for admission; privileges and duties of pupils. 1. All applicants for admission to a normal school shall be residents of this state, or, if not, they shall be admitted only upon the payment of such tuition fees as shall be, from time to time, prescribed by the commissioner of education. Applicants shall present such evidences of proficiency or be subject to such examination as shall be prescribed by said commissioner.

2. A normal school shall not receive into its academic department any pupil not a resident of the territory, for the benefit or advantage of whose residents the state has pledged itself to maintain such academic department unless such pupil declares it to be her intention to remain in such school to complete the regular normal course.

3. All students duly admitted to the normal department shall be entitled to all the privileges of the school, free from all charges for tuition or for the use of books or apparatus, but every pupil shall pay for books lost by him, and for any damage to books in his possession. Any pupil may be dismissed from the school by the local board for immoral or disorderly conduct, or for neglect or inability to perform his duties.

This section was derived from Education Law of 1909, § 667. It came from L. 1866, ch. 463, § 5, as amended by L. 1889, ch. 142, § 1.

Section 820 of the Education Law of 1909 is now covered by sections 600, 601.

§ 821. Practice departments in Fredonia school. The local board of control of the state normal school at Fredonia shall have the same powers and privileges in respect to practice departments as boards of education, under subdivision three of section three hundred and ten and section three hundred and seventeen of this chapter.

This section was Education Law of 1909, § 668, which came from L. 1866, ch. 466, § 9, as added by L. 1904, ch. 677, § 1.

Section 821 of the Education Law of 1909 is now covered by section 602.

§ 822. Special policemen. For the purpose of protecting and preserving such buildings, grounds and other property, and preventing injuries thereto, and preserving order, preventing disturbances, and preserving the peace in such buildings and upon such grounds, the local boards of managers of each of said normal schools shall have power, by resolution or otherwise, to appoint,

from time to time, one or more special policemen, and to remove the same at pleasure, who shall be police officers, with the same powers as constables of the town or city where such school is located, whose duty it shall be to preserve order, and prevent disturbances and breaches of the peace in and about the buildings, and on and about the grounds used for said school, or pertaining thereto, and protect and preserve the same from injury, and to arrest any and all persons making any loud or unusual noise, causing any disturbance, committing any breach of the peace, or misdemeanor or any wilful trespass upon such grounds, or in or upon said buildings, or any part thereof and convey such person or persons so arrested, with a statement of the cause of the arrest, before a proper magistrate to be dealt with according to law.

This section was Education Law of 1909, § 669, which came from L. 1880, ch. 348, § 3.

Section 822 of the Education Law of 1909 is now covered by section 603.

§ 823. Village or city may insure normal school property. Each village and city in this state, wherein is located a state normal and training school, may insure and keep insured, the real and personal property of such school against loss or damage by fire, when the state refuses to insure, or keep adequately insured, such property. The insurance is to be in the name of the state, and in case of loss, any moneys obtained from such insurance are to be used and disposed of the same as if the state had effected such insurance. The amount of insurance to be carried shall be determined by the municipal authorities of such village or city.

This section was, substantially, Education Law, § 670, which came from L. 1905, ch. 252, § 2.

Section 823 of the Education Law of 1909 is now covered by sections 604 and 605.

§ 824. Expense of insurance a village or city charge. The amount of money necessary to effect and continue such insurance shall be raised annually by such village or city at the same time, and in the same manner, as the ordinary expenses of the village or city are raised.

This section was Education Law of 1909, which came from L. 1905, ch. 252, § 2.

Section 824 of the Education Law of 1909 is now covered by section 606.

§ 825. Deposit of insurance moneys in bank. Where any loss or damage, against which insurance exists, occurs to the real or

personal property of any of the normal and training schools of the state, the moneys realized from such insurance shall be deposited by each company in which such property is insured in a bank to be designated by the state comptroller, subject to the check of the local board of managers of such school, countersigned by the state comptroller. Such moneys shall be kept as a separate fund to the credit of the local board of managers of such school, and shall be immediately available to be expended under the direction of such local board of managers, subject to the approval of the commissioner of education, to repair or replace, wholly or partially, the real or personal property so damaged or destroyed.

This section was Education Law of 1909, § 672, which came from L. 1894, ch. 488, § 1.

§ 826. Acceptance of grants and bequests authorized. The local board of managers of any state normal and training school of this state, may accept, for the state, by and with the consent of the commissioner of education the gift, grant, devise or bequest of money or other property, and *to apply the same to any purpose, not inconsistent with the general purposes of such school, which shall be prescribed in the instrument by which such gift, grant, devise or bequest shall be made.

This section was, substantially, Education Law of 1909, § 673, which came from L. 1896, ch. 165, § 1.

Devises and bequests to state in trust for schools: see STATE FINANCE LAW, §§ 39, 40.

Grants and devises of real property to common schools: see REAL PROPERTY LAW, § 114.

Grants and bequests of personal property in trust for certain educational purposes: see PERSONAL PROPERTY LAW, § 13.

§ 827. Education of Indian youth. The state treasurer shall pay, on the warrant of the comptroller, on bills approved by the commissioner of education, from the general fund, such sum as may be appropriated for the support and education of Indian youth in the state normal schools.

This section was derived from Education Law of 1909, § 674. It came from L. 1850, ch. 89, § 1.

§ 828. Selection of Indian youth. The selection of such youth shall be made by the commissioner of education, from the several

* So in original.

Indian tribes located within this state; and in making such selection due regard shall be had to a just participation in the privileges of this article by each of the said several tribes, and, if practicable, reference shall also be had to the population of each of said tribes in determining such selection.

This section was Education Law of 1909, § 675, which came from L. 1850, ch. 89, § 2.

§ 829. Age of youth and limit of time for support. Such youth shall not be under sixteen years of age, nor shall any of such youth be supported or educated at said normal schools for a period exceeding three years.

This section was Education Law of 1909, § 676, which came from L. 1850, ch. 89, § 3.

§ 830. Guardians of youth. The local board of each normal school shall be the guardians of such Indian youth, during the period of their connection with the school; and shall pay their necessary expenses, as provided in section eight hundred and twenty-seven of this article.

This section was derived from Education Law of 1909, § 677, which came from L. 1850, ch. 89, § 4.

§ 831. Indian pupils on equality with others. The Indian pupils selected in pursuance of this article, and attending said normal schools, shall enjoy the same privileges, of every kind, as the other pupils attending said schools, including the payment of traveling expenses, not exceeding ten dollars to each pupil.

This section was Education Law of 1909, § 678, which came from L. 1850, ch. 89, § 5.

§ 832. New York state normal college. 1. The state normal school heretofore established at Albany is continued under the name of the New York state normal college and the executive committee of said college shall be known as the board of trustees thereof.

2. The said state normal college shall be as heretofore, under the supervision, management and government of the commissioner of education and the regents of the university. The said commissioner and regents shall from time to time, make all needful

rules and regulations; fix the number and compensation of teachers and others to be employed therein; prescribe the examination and the terms and conditions on which pupils shall be received and instructed therein; the number of pupils from the respective counties conforming as nearly as may be to the ratio of population, and provide in all things for the good government and management of the said college. [1]The board of trustees of such college may appoint a secretary and a treasurer and fix their compensation.

Subdivision 2 was amended to read as above by L. 1913, ch. 511. The change is indicated in the footnote.

This section was, substantially, Education Law of 1909, § 679, subds. 1 and 2, which came from L. 1844, ch. 311, § 2, and L. 1848, ch. 318, § 3.

§ 833. Board of trustees. 1. The board of trustees having the care, management and government of said college shall consist of five persons of whom the commissioner of education shall be one. Said commissioner shall be president ex officio of said board. The other members of such board shall be appointed by said commissioner subject to the approval of the regents.

2. In addition to the powers and duties named herein the commissioner of education and the board of trustees of said state normal college shall possess all the powers and duties which the said commissioner and the local boards respectively possess under this article in relation to state normal schools.

This section was derived from Education Law of 1900, § 679, subds. 3 and 4. These subdivisions came from L. 1844, ch. 311, § 3, and L. 1848, ch. 318, § 3. The report of the Board of Statutory Consolidation (1907) at page 1169 has the following note: "This section relates to the New York State Normal College at Albany, which was established as the New York State Normal School by L. 1844, ch. 311, and continued by L. 1848, ch. 318. The regents, under date of March 13, 1890, incorporated the institution as the New York State Normal College and changed the 'executive committee' to the 'board of trustees.' The provisions of law relating to state normal schools, not inconsistent with these sections, apply to this institution, hence the latter subdivision."

§ 834. Contracts for the education of children, residing in a city or district, in which a state normal school is located. The commissioner of education is authorized to enter into a contract with the board of education of a city or district in which a state normal school is located for the education by the state, for such

[1] Following sentence, new.

period of time as may be agreed upon, of all or part of the children of legal school age residing in such city or school district. Before such contract becomes binding, it must be approved by the board of regents. Such contract must be executed in duplicate and one contract filed with the commissioner of education and the other with the state comptroller. A board of education in such a city or district is hereby authorized and empowered to enter into such contracts with the said commissioner of education and to perform all necessary acts to carry out the purposes of this act.

New. Added by L. 1916, ch. 315.

ARTICLE 33*

Fines, Penalties, Forfeitures and Costs

Section 850. Disposition of fines for benefit of common schools.
851. Report and payment of fines.
852. Disposition of fines for benefit of schools of town, district or city.
853. Disposition of fines in case of joint district.
854. Penalty for falsely claiming to represent commissioner of education, regents or other school officer.
855. Forfeiture of amount of moneys lost by neglect.
856. Forfeiture of amount of penalty where suit is neglected.
857. No costs to plaintiff in certain cases.
858. Costs, expenses and damages a district charge in certain cases.
859. Payment of costs, charges and expenses by vote of district meeting.
860. Appeal to county judge.
861. Hearing before county judge.
862. Duty of trustees to carry out order.

§ 850. Disposition of fines for benefit of common schools. Whenever, by any statute, a penalty or fine is imposed for the benefit of common schools, and not expressly of the common schools of a town or school district, it shall be taken to be for the benefit of the common schools of the county within which the conviction is had; and the fine or penalty, when paid or collected, shall be paid forthwith into the county treasury, and the treasurer shall credit the same as school moneys of the county, unless the county comprise a city having a special school act, in which case he shall report it to the commissioner of education, who shall apportion it upon the basis of population by the last census, between the city and the residue of the county, and the portion belonging to the city shall be paid into its treasury.

This section was Education Law of 1909, § 500, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 25.

* This article was article 19 of the Education Law of 1909. Article 33 of the Education Law of 1909 was, "General Industrial and Trade Schools."

§ 851. Report and payment of fines. Every district attorney shall report, annually, to the board of supervisors, all such fines and penalties imposed in any prosecution conducted by him during the previous year; and all moneys collected or received by him or by the sheriff, or any other officer, for or on account of such fines or penalties, shall be immediately paid into the county treasury, and the receipt of the county treasurer shall be a sufficient and the only voucher for such money.

This section was Education Law of 1909, § 501, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 26.

§ 852. Disposition of fines for benefit of schools of town, district or city. Whenever a fine or penalty is inflicted or imposed for the benefit of the common schools of a town or school district, the magistrate, constable or other officer collecting or receiving the same shall forthwith pay the same to the county treasurer of the county in which the schoolhouse is located, who shall credit the same to the town or district for whose benefit it is collected. If the fine or penalty be inflicted or imposed for the benefit of the common schools of a city having a special school act, or of any part or district of a city, it shall be paid into the city treasury.

This section was Education Law of 1909, § 502, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 27.

§ 853. Disposition of fine in case of joint district. Whenever a penalty or fine is imposed upon any school district officer for a violation or omission of official duty, or upon any person for any act or omission within a school district, or touching property or the peace and good order of the district, and such penalty or fine is declared to be for the use or benefit of the common schools of the town or of the county, and such school district lies in two or more towns or counties, the town or county intended by the act shall be taken to be the one in which the schoolhouse, or the schoolhouse longest owned or held by the district is at the time of such violation, act or omission.

This section was Education Law of 1909, § 503, which came from Consolidated School Law, L. 1894, ch. 556, tit. 2, § 28.

§ 854. Penalty for falsely claiming to represent commissioner of education, regents or other school officer. It shall be a misdemeanor for any employee, agent or representative of a firm,

company or corporation engaged in selling, publishing or manufacturing papers, periodicals, books, maps, charts, school supplies, apparatus or furniture, or any other person engaged or employed in such business to falsely represent to a board of trustees or board of education of a school district or to a teacher employed in a public school in this state or to a superintendent of schools or other school officer that he is an agent, employee, or representative of the commissioner of education, the state education department, the regents, or of any other school officer.

This section was Education Law of 1909, § 504, which came from Consolidated School Law, L. 1894, ch. 556, tit. 1, § 16, as added by L. 1906, ch. 58, § 1.

§ 855. Forfeiture of amount of moneys lost by neglect. Whenever the share of school moneys or any portion thereof, apportioned to any town or school district, or any money to which a town or school district would have been entitled, shall be lost, in consequence of any wilful neglect of official duty by any school commissioner, town clerk, trustees or clerks of school districts, the officer guilty of such neglect shall forfeit to the town, or school district so losing the same, the full amount of such loss with interest thereon.

This section was Education Law of 1909, § 505, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 1.

§ 856. Forfeiture of amount of penalty where suit is neglected. Where any penalty for the benefit of a school district, or of the schools of any school district, town, school commissioner district or county, shall be incurred, and the officer, whose duty it is by law to sue for the same, shall wilfully and unreasonably refuse or neglect to sue for the same, such officer shall forfeit the amount of such penalty to the same use, and it shall be the duty of his successor in office to sue for the same.

This section was Education Law of 1909, § 506, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 2.

§ 857. No costs to plaintiffs in certain cases. 1. In any action against school officers, including supervisors of towns, in respect to their duties and powers under this chapter, for any act performed by virtue of or under the color of their offices, or for any refusal or omission to perform any duty enjoined by law, and

which might have been the subject of an appeal to the commissioner of education, no costs shall be allowed to the plaintiff, in cases where the court shall certify that it appeared on the trial that the defendants acted in good faith.

2. The provision of subdivision one of this section shall not extend to suits for penalties, nor to suits or proceedings to enforce the decisions of the commissioner of education.

This section was Education Law of 1909, § 507, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 3.

Applicability to actions by school trustees.— It seems that the provisions of this section are applicable to an action at law brought by school district trustees against a school commissioner on account of his refusal to turn over to the proper officer of their district certain school moneys which had been apportioned to the district. Ex p. Bennett, (1846) 3 Denio, 175.

Extent of the exemption.— The effect of this section is to exempt the officers specified "from costs throughout all stages of the action" and a certificate of good faith given at the trial operates with respect to all subsequent proceedings. Willey v. Shaver, (1873) 1 Thomp. & C. 324.

§ 858. Costs, expenses and damages a district charge in certain cases. 1. Whenever the trustees of any school district, or any school district officers, have been or shall be instructed by a resolution adopted at a district meeting to defend any action brought against them, or to bring or defend an action or proceeding touching any district property or claim of the district, or involving its rights or interests, or to continue any such action or defense, all their costs and reasonable expenses, as well as all costs and damages adjudged against them, shall be a district charge and shall be levied by tax upon the district.

2. If the amount claimed by them be disputed by a district meeting, it shall be adjusted by the county judge of any county in which the district or any part of it is situated.

This section was derived from Education Law of 1909, § 508, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 4.

Nature of the judgment for costs.—"A judgment for costs recovered against the trustees of a school district in their official character binds the trustees individually, and may be collected by execution out of their individual property." It is not a judgment against the school district, but it may, as provided in this and the following sections, constitute a district charge, to be paid by a tax on the district. People v. Abbott, (1887) 107 N. Y. 225, 13 N. E. 779.

Remedy on trustees' contracts.— For the purpose of the remedy by action, the contracts of school trustees are treated as their individual contracts, the district being bound in certain cases to indemnify its trustees. Matter of Purdy, (1900) 56 App. Div. 544, 67 N. Y. S. 642.

§ 859. Payment of costs, charges and expenses by vote of district meeting. 1. Whenever such trustees or any school district officer shall have brought or defended any such action or proceeding, without any such resolution of the district meeting, and after the final determination of such suit or proceeding, shall present to any regular meeting of the inhabitants of the district, an account, in writing, of all costs, charges and expenses paid by him or them, with the items thereof, and verified by his or their oath or affirmation, and a majority of the voters at such meeting shall so direct, it shall be the duty of the trustees to cause the same to be assessed upon and collected of the taxable property of said district, in the same manner as other taxes are by law assessed and collected; and, when so collected, the same shall be paid over, by an order upon the collector or treasurer to the officers entitled to receive the same.

2. The provision of subdivision one of this section shall not extend to suits for penalties, nor to suits or proceedings to enforce the decisions of the commissioner of education.

This section was Education Law of 1909, § 509, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 5.

Payment of costs and indemnification of trustees.— Where an action is brought or defended without any resolution of a district meeting, no obligation rests "upon the district to indemnify the trustees for costs, charges or expenses, until a district meeting shall have found in favor of the claim and voted that a tax be assessed and collected for its payment, or unless on appeal to the county judge from the refusal of the district meeting to vote a tax, it shall be decided that the account in whole or in part ought justly to be charged on the district." Under such circumstances a writ of mandamus will not be issued directing the trustees to forthwith pay the costs embraced in the judgment, or deliver to the plaintiff in the action, an order on the collector of the school district for the amount thereof. People v. Abbott, (1887) 107 N. Y. 225, 13 N. E. 779.

Where an action to recover a tax was commenced by the trustees of a school district without authority, the judgment for costs rendered against them was held not to be a claim against the property of the district. Beck v. Kerr, (1903) 87 App. Div. 1, 83 N. Y. S. 1057.

§ 860. Appeal to county judge. 1. Whenever any officer mentioned in section eight hundred and fifty-nine shall have complied with the provisions of such section and the meeting shall have refused to direct the trustees to levy a tax for the payment of the costs, charges and expenses claimed by him, such officer shall immediately give notice to such meeting that he will appeal to the county judge of the county in which such district is located

from the refusal of said meeting to vote a tax for the payment of such claim.

2. Within ten days after the refusal of the meeting to allow such claim such officer shall serve upon the clerk of the district or, if there be no district clerk, upon the town clerk of the town an itemized statement of his claim, duly verified, together with a written notice that on a certain day named therein such officer will present such claim to the county judge for settlement.

3. The clerk upon whom such notice and claim are served shall file the same in his office and such notice and claim shall be subject to the inspection of any of the inhabitants of the school district.

4. The meeting at which notice of the intention of such officer to appeal to the county judge is given or any subsequent district meeting, duly called, may appoint one or more of the legal voters of such district or authorize the trustee to employ counsel to appear before the county judge at the time fixed for a hearing on such claim and protect the rights of the district upon such settlement. The expenses incurred in the performance of this duty shall be a charge upon the district and the trustees upon a presentation of the account of such expenses with proper vouchers therefor shall pay the same from any available funds in the district or include the necessary amount in a tax-list to be levied upon the district.

5. A refusal of the trustees to levy such tax for the payment of such expenses shall be subject to an appeal to the commissioner of education.

This section was derived from Education Law of 1909, § 510, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 6.
Section 860 of the Education Law of 1909 is now covered by section 900.

§ 861. Hearing before county judge. 1. Upon the appearance of the parties, or upon due proof of service of the notice and copy of the account, the county judge shall examine into the matter and hear the proofs and allegations presented by the parties, and decide by order whether or not the account, or any and what portion thereof, ought justly to be charged upon the district, with costs and disbursements to such officer.

2. Such costs and disbursements shall not exceed the sum of thirty dollars, and the decision of the county judge shall be final;

but no portion of such account shall be so ordered to be paid which shall appear to such judge to have arisen from the wilful neglect or misconduct of the claimant. The account with the oath of the party claiming the same shall be prima facie evidence of the correctness thereof. The county judge may adjourn the hearing from time to time, as justice shall seem to require.

This section was derived from Education Law of 1909, § 511. The change made by the Education Law of 1910 (ch. 140) was the elimination of the words "in his discretion," with which the first subdivision of the section in the older law concluded. Section 511 of the Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 7.

Section 861 of the Education Law of 1909 is now covered by section 901.

When account may be charged upon district.—Where a school trustees, without having obtained the authority of the school district, unsuccessfully defended a mandamus proceeding to compel the payment of a claim against the district, which he had refused to pay because he believed that if it were paid he would be unable to meet the necessary expenses of maintaining the school in the district, the county judge had authority to make an order declaring the expenses of such defense to be a charge upon the district. Anderson v. School Dist. No. 15, (1903) 89 App. Div. 231, 85 N. Y. S. 943. But a county judge has no power to impose upon a school district a claim for the costs incurred by a person in an unsuccessful attempt to defend his election as school trustee on an appeal to the commissioner of education, since the statutory provisions relating to this subject have no application to such appeals. Matter of Roach, (1900) 31 Misc. 590, 65 N. Y. S. 653. See § 859.

Appeal from order of county judge.— The word "final" as used in subdivision 2 of this section is merely intended to give the order of the county judge the effect of a final order in a special proceeding, and subject to review by the Appellate Division. Anderson v. School Dist. No. 15, (1903) 89 App. Div. 231, 85 N. Y. S. 943.

What may be considered on appeal.— In Matter of Purdy, (1900) 56 App. Div. 544, 67 N. Y. S. 642, the respondent was trustee of a school district and was duly authorized by a special school meeting to rebuild a fence around the school yard. He constructed the fence, and subsequently an action was brought against the respondent and another to recover a part of the land inclosed by said fence, which action resulted in a judgment in favor of the plaintiff, which judgment was paid by the respondent. The respondent in the meantime having ceased to be a trustee, a resolution was adopted at a school meeting of said district directing the trustee to appeal the suit involving the title to the schoolhouse lot, but the appeal was never in fact taken. A special school meeting was subsequently called for the purpose of taking some definite action in regard to respondent's claim, and although it is urged by the appellant that this meeting was irregular in many respects, the alleged irregularities were never brought up for review in the manner provided by the statute. The court said: "We are of the opinion that they cannot be passed upon by this court. At this meeting a verified claim was presented by the claimant, and a resolution ordering the trustee to pay said claim was defeated. The respondent thereupon gave oral notice that he would present his claim to the county judge for settlement, as provided by sections 5 and 6 of title XV of the Consolidated School Law, and on the 8th of April, 1899, notice was served upon a person who had been elected to the office of district clerk, but who is alleged to have been ineligible to the office, that the claimant would appeal to the county judge. The matter was heard by the county judge, who, after various adjournments, granted an order charging respondent's claim upon the school district. This appeal comes from the order, and

the school district urges that the county judge was without jurisdiction and that the whole proceeding is contrary to law. The school district neglected to appeal from the action of the school meeting to the superintendent of public instruction, and we are not permitted to enter into a review of the alleged irregularities (§ 1, tit. XIV, Consolidated School Law), nor will this court consider collaterally the title of the district clerk to his office. He has been chosen to the position, and the presumption is that he was the clerk of the district; he was at least clerk de facto, and the rights of the respondent cannot be made to depend upon the legal status of the person who was acting as clerk."

§ 862. Duty of trustees to carry out order. It shall be the duty of the trustees of any school district, within thirty days after service upon them or upon the district clerk of a copy of an order of the county judge and notice thereof to them or any two of them, to cause the same to be entered at length in the book of record of said district, and to raise the amount thereby directed to be paid, by a tax upon the district, to be by them assessed and levied in the same manner as a tax voted by the district.

This section was, substantially, Education Law of 1909, § 512, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 8.

Section 862 of the Education Law of 1909 is now covered by section 902.

ARTICLE 34*

APPEALS OR PETITIONS TO COMMISSIONER OF EDUCATION

Section 880. Appeals or petitions to commissioner of education and other proceedings.
881. Powers of commissioner upon appeals †of petitions, et cetera.
882. Filed papers and copies thereof.

§ 880. Appeals or petitions to commissioner of education and other proceedings. Any person conceiving himself aggrieved may appeal or petition to the commissioner of education who is hereby authorized and required to examine and decide the same; and the commissioner of education may also institute such proceedings as are authorized under this act and his decision in such appeals, petitions or proceedings shall be final and conclusive, and not subject to question or review in any place or court whatever. Such appeal or petition may be made in consequence of any action:

1. By any school district meeting;

2. By any school commissioner and other officers, in forming or altering, or refusing to form or alter, any school district, or in refusing to apportion any school moneys to any such district or part of a district;

3. By a supervisor in refusing to pay any such moneys to any such district;

4. By the trustees of any district in paying or refusing to pay any teacher, or in refusing to admit any scholar gratuitously into any school or on any other matter upon which they may or do officially act.

5. By any trustees of any school library concerning such library, or the books therein, or the use of such books;

6. By any district meeting in relation to the library or any other matter pertaining to the affairs of the district.

7. By any other official act or decision of any officer, school authorities, or meetings concerning any other matter under this chapter, or any other act pertaining to common schools.

This section was derived from Education Law of 1909, § 360, which came from Consolidated School Law, L. 1894, ch. 556, tit. 14, § 1.

* This article was article 14 of the Education Law of 1909. Article 34 of the Education Law of 1909 was, "Kindergartens."

† So in original.

Section 880 of the Education Law of 1909 is now covered by section 940.

Constitutionality.— The legislature had the undoubted constitutional power to provide that the determination of the commissioner of education on an appeal from the decision of a local school district meeting should be "'final and conclusive, and not subject to question or review in any place or court whatever.'" People v. Skinner, (1902) 74 App. Div. 58, 77 N. Y. S. 36.

Where a school district has acquiesced in the jurisdiction of the commissioner of education as claimed by the party appealing, and has submitted its case to him for decision, it will not thereafter be permitted to raise an objection to the constitutionality of the provision, making his decision in the matter final. People v. Eckler, (1880) 19 Hun 609.

Purpose of section.— "The Education Law of the state contemplates a vast system of education of all grades, at the head of which stands the commissioner of education. While the law does not contemplate that any person may be deprived of a legal right, or that a right which has become vested may be destroyed, it certainly does contemplate that such disputes as arise in the administration of this enormous system should be passed upon and determined, at least so far as possible, by that department of the state upon which falls the burden and the responsibility of its proper and lawful administration." People v. Draper, (1912) 78 Misc. 329, 138 N. Y. S. 351. "An examination of the Education Law discloses that the legislature intended to put upon the commissioner of education full responsibility for the management and control, among other things, of the district schools and of their trustees; and to require of him a strict enforcement of the law applicable to such schools and trustees; to make his decision upon all disputes within his jurisdiction, which arose and which were brought before him by appeal or upon petition, in consequence of a violation of the school law, final." Matter of O'Neil, (1911) 71 Misc. 469, 130 N. Y. S. 446.

Nature of remedy and proceeding.— The remedy provided by the section of an appeal to the commissioner of education by one believing himself aggrieved by the action of any school district meeting should be a very simple, expeditious and effective proceeding at an expense not exceeding twenty-five dollars, and it is the official duty of school trustees to serve their district in this economical manner rather than embark in litigation that results in their making a claim against the school district for the expense of such litigation. Where, without the consent of the defendant trustee, an action for an injunction was brought by one claiming to be one of the three trustees of the school district, to which action one conceded to be a trustee was joined as a plaintiff aaginst another trustee and one claiming to be a trustee and a teacher employed by him, to determine who was elected trustee at the annual meeting and who was legally employed to teach the school for the then ensuing school year, in which plaintiffs obtained a preliminary injunction restraining defendants from entering the schoolhouse, etc., and by a decision of the Court of Appeals it was held that it was no case for an injunction, the services and expenses of the litigation were wholly unnecessary and could not form the basis of any just charge against the school district. Matter of Humphrey, (1906) 94 Misc. 377, 157 N. Y. S. 807.

From what decisions an appeal may be taken — *Failure to appoint teachers.* —An appeal may be taken by a member of a board of education to the commissioner of education from the failure of his board to adopt a resolution appointing teachers for the schools under its control although no affirmative action whatever has been taken with regard to the matter. Hutchinson v. Skinner, (1897) 21 Misc. 729, 49 N. Y. S. 360.

Refusal to pay teacher's salary.— The refusal of a school trustee to pay a teacher his wages pursuant to a contract for his services as teacher is a decision within the meaning of this section, even though the teacher has not performed all of the services called for by the contract. It is sufficient to

support his right of appeal that he has "a claim to some extent for teacher's wages." People v. Eckler, (1880) 19 Hun 609.

Removal of teacher — remedy.— A teacher in the public schools is not entitled to a trial on charges before removal, but his remedy is by appeal to the commissioner of education or by an action for damages against the board of education. Ridenour v. Board of Education, (1896) 15 Misc. 418, 37 N. Y. S. 109; People v. O'Brien, (1906) 112 App. Div. 97, 97 N. Y. S. 1115. See also People v. Board of Education, (1914) 160 App. Div. 557, 145 N. Y. S. 853, affirmed (1914) 212 N. Y. 463, 106 N. E. 307.

Determination of qualifications of teachers.— The commissioner of education, as chief executive officer of the state education department, has supervisory control over the public schools of the city of New York and jurisdiction to review the acts of its board of education pertaining to the qualifications of teachers and their eligibility to appointment in said schools. People v. Draper, (1912) 78 Misc. 329, 138 N. Y. S. 351.

Seizure of property for nonpayment of tax.— Where a school district collector acting under the direction of the trustee of the district seizes certain property for nonpayment of the school tax, without having posted the notices required by law, the injured party has the right to appeal to the commissioner of education. Whitbeck v. Billings, (1874) 1 Hun 494 mem.

Failure of school commissioner to pay over school moneys.—An appeal will lie to the commissioner of education where a school commissioner refuses to pay over to the proper officer of a school district certain school moneys which are in his hands, which have been apportioned to that district. Ex p. Bennett, (1846) 3 Denio 175.

Error in apportioning tax.— Where the trustees of a school district make an error in apportioning a tax among the taxable inhabitants of their district, or where they omit to insert in the tax lists the names of all the taxable inhabitants, the remedy of a party aggrieved thereby is by appeal to the commissioner of education. Easton v. Calendar, (1833) 11 Wend. 90.

Condemnation of school building.—"An appeal may be taken to the commissioner of education from the decision of the school commissioner condemning any school building and directing the construction of a new one." Op. Atty.-Gen. (1904) 379.

Condemnation of property for school purposes.— It seems that an objection to the condemnation of property for school purposes under section 463 of this chapter cannot be taken by appeal to the commissioner of education. Hemenway v. Schoonmaker, (1909) 134 App. Div. 86, 118 N. Y. S. 931.

Who may take an appeal — *Superintendent of schools in New York city.*— The superintendent of public schools in the city of New York is a person "aggrieved" within the meaning of this section giving a right of appeal to the commissioner of education from the decision of the board of education placing certain teachers on the eligible lists for appointment to positions in the public schools. People v. Finley, (1914) 211 N. Y. 51, 105 N. E. 109, affirming 161 App. Div. 906, 145 N. Y. S. 1139. And under this section the New York city superintendent of schools has a right to take an appeal "as a citizen and as an official" to the commissioner of education from a resolution of the board of education directing him to put certain names on "the appropriate eligible lists for teachers of graduating classes." People v. Draper, (1912) 78 Misc. 329, 138 N. Y. S. 351.

School teacher.— Where a school district trustee has refused to pay a teacher his salary pursuant to a contract which it is alleged was corruptly made with a former trustee, such teacher is a "person conceiving himself aggrieved" within the meaning of this section, and may take an appeal to the commissioner of education. People v. Eckler, (1880) 19 Hun 609.

Burden of establishing right to appeal.— Upon an appeal to the commissioner of education taken by a person individually and as mayor of a city, the burden is on the appellant to show before the commissioner that he is

aggrieved by the decision of the board of education appealed from, which dismissed charges preferred against the superintendent of schools of the said city. Matter of Harris, (1908) 58 Misc. 297, 109 N. Y. S. 983.

Exclusiveness of remedy by appeal.— The commissioner of education is not given exclusive jurisdiction to pass upon the validity of meetings at which taxes are voted. Austin v. School Dist. No. 5, (1910) 68 Misc. 538, 125 N. Y. S. 222. A contest over the title to the office of school trustee, where both claimants rest upon an election alleged to have been regular and valid, should be decided by an appeal to the commissioner of education as authorized by this section. An injunction will not lie in such a case to prohibit one of the claimants from exercising the functions of the office. Welker v. Lathrop, (1914) 210 N. Y. 434, 104 N. E. 938, modifying 149 App. Div. 935, 134 N. Y. S. 1150. Where it appeared that the determination of a board of education removing a principal of a school was reviewable by the commissioner of education on an appeal to him, a writ of certiorari sued out for the same purpose was quashed. People v. O'Brien, (1906) 112 App. Div. 97, 97 N. Y. S. 1115. Similarly as to action of quo warranto. Op. Atty.-Gen. (1901) 354. An assistant teacher in the public schools of the city of New York who had been removed by the board of education for misconduct and who still had a right of appeal to the former superintendent of public instruction was denied a writ of alternative mandamus to procure reinstatement, on the principle that the writ could not be issued so long as an adequate remedy by appeal existed. People v. Board of Education, (1900) 32 Misc. 63, 66 N. Y. S. 149.

Determination of collateral questions.— On an appeal to the commissioner of education from the decision of a school trustee refusing to pay the salary of a teacher, he has authority to determine the validity of the agreement between the trustee and teacher and the sufficiency of the trustee's excuse for discharging her. People v. Allen, (1897) 19 Misc. 464, 44 N. Y. S. 566.

Review of the commissioner's decision.— The commissioner's determination with respect to the refusal of a school trustee to pay a teacher his salary and as to the validity of the contract in question as well as with regard to the property of the teacher's dismissal, is final. People v. Allen, (1897) 19 Misc. 464, 44 N. Y. S. 566.

Review of orders made by commissioner in the first instance.— This section does not deprive the courts of the power to review an order removing a local school officer made by the commissioner of education in the first instance. People v. Skinner, (1899) 159 N. Y. 162, 53 N. E. 806, affirming 37 App. Div. 44, 55 N. Y. S. 337.

Commissioner's power to make his decision effective.—Where the members of a board of education are unable to agree with regard to the employment of teachers, the commissioner of education has the power, in order to give effect to his decision, to make an order appointing temporarily a full corps of teachers and employees, at a rate of compensation stated in the order, and he may require the board to open the school buildings, to place them at the disposal of the new employees and pay them at the rates fixed. Hutchinson v. Skinner, (1897) 21 Misc. 729, 49 N. Y. S. 360.

Waiver of right to jury trial.—The right to a jury trial is waived by the submission of a controversy to the commissioner of education for his determination. People v. Eckler, (1880) 19 Hun 609.

§ 881. Powers of commissioner upon appeals or petitions, et cetera. The commissioner, in reference to such appeals, petitions or proceedings, shall have power:

1. To regulate the practice therein.

2. To determine whether an appeal shall stay proceedings, and prescribe conditions upon which it shall or shall not so operate.

3. To decline to entertain or to dismiss an appeal, when it shall appear that the appellant has no interest in the matter appealed from, and that the matter is not a matter of public concern, and that the person injuriously affected by the act or decision appealed from is incompetent to appeal.

4. To make all orders, by directing the levying of taxes or otherwise, which may, in his judgment, be proper or necessary to give effect to his decision.

This section was Education Law of 1909, § 361, except that the first sentence of that law read: "The commissioner, in reference to such appeals, shall have power." Section 361 of the Education Law of 1909 came from Consolidated School Law, L. 1894, ch. 556, tit. 14, § 2.

Section 881 of the Education Law of 1909 is now covered by section 941.

§ 882. Filed papers and copies thereof. The commissioner shall file, arrange in the order of time, and keep in his office, so that they may be at all times accessible, all the proceedings on every appeal or petition to him under this article, including his decision and orders founded thereon; and copies of all such papers and proceedings, authenticated by him under his seal of office, shall be evidence equally with the originals.

This section was derived from Education Law, § 362, which came from Consolidated School Law, L. 1894, ch. 556, tit. 14, § 3.

Section 882 of the Education Law of 1909 is now covered by section 942.

ARTICLE 35*

Orphan Schools

Section 900. Schools of orphan asylums.
901. Rules subject to supervision of school authorities.
902. Annual reports.

§ 900. Schools of orphan asylums. The schools of the several incorporated orphan asylum societies in this state, other than those in the city of New York, shall participate in the distribution of the school moneys, in the same manner and to the same extent, in proportion to the number of children educated therein, as the common schools in their respective cities or districts. The schools of said societies shall be subject to the rules and regulations of the common schools in such cities or districts, but shall remain under the immediate management and direction of the said societies as heretofore.

This section was Education Law of 1909, § 860, which came from Consolidated School Law, L. 1894, ch. 556, tit. 14, § 1.

Section 900 of the Education Law of 1909 was omitted in the enactment of Education Law of 1910 (ch. 140).

Legality of payments for support of schools in orphan asylums.— An orphan asylum "incorporated . . . for the 'maintenance and tuition of orphan children of the male sex, and in particular the male orphan children of soldiers who have lost their lives in the service of the United States,'" is not a "school or institution of learning," within the meaning of section 4 of article IX of the constitution, which provides that "neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught," and consequently a taxpayer is not entitled to an injunction to restrain the board of education from paying the salaries of teachers in such an asylum. Sargent v. Board of Education, (1904) 177 N. Y. 317, 69 N. E. 722, affirming 76 App. Div. 588, 79 N. Y. S. 127, affirmed 35 Misc. 321, 71 N. Y. S. 954.

Payments to sectarian institutions.— In a taxpayer's action to restrain the payment of public moneys raised for educational purposes, it was held that the fact that an orphan asylum for boys was controlled by a catholic organization and that the teachers employed there, all of whom were duly licensed, were members of a sisterhood connected with such denomination, did not constitute an objection to the payment of public moneys to such asylum where it appeared that no denominational tenets or doctrines were taught during school hours, since the instruction of the inmates of the asylum was neither practicable nor possible elsewhere than in the institution itself, and it was

* This article was article 35 of the Education Law of 1909, which included sections 860–862.

the duty of the board of education to provide for their secular education therein, regardless of the religious belief of those in control of the asylum. The fact that the teachers wore the garb of the sisterhood was said to be immaterial. Sargent v. Board of Education, (1904) 177 N. Y. 317, 69 N. E. 722, affirming 76 App. Div. 588, 79 N. Y. S. 127, which affirmed 35 Misc. 321, 71 N. Y. S. 954.

Mandamus to compel payment of funds to orphan school.— Where no money had been raised by a school district for the support of the school in an orphan asylum situated within its borders, it was held that a writ of mandamus should not be issued to compel the trustees to pay to such asylum its share of the school moneys raised in the district, since all the money in their hands had been raised for other purposes. People v. Glowacki, (1873) 2 Thomp. & C. 436.

§ 901. Rules subject to supervision of school authorities. Every such asylum may make all laws, rules and regulations relative to the education and discipline of their inmates, as a majority of the trustees thereof at their annual meetings shall think fit and proper; but such laws, rules and regulations shall not be repugnant to the laws of this state in its policy in reference to public and primary instruction, and shall be subject at all times to the inspection and supervision of the several educational officers of the different villages, towns or cities in which such orphan asylums may be located.

This section was Education Law of 1909, § 861, which came from Consolidated School Law, L. 1894, ch. 556, tit. 14, § 2.

Section 901 of the Education Law of 1909 is now covered by section 945.

§ 902. Annual reports. An annual report shall be made and sworn to by the presiding officer of any such asylum, stating the number of inmates thereof, the time spent by them in pursuing studies therein, in what studies they shall have been instructed, and the manner in which the public funds distributed to it shall have been expended, which shall be filed with the commissioner of education.

This section was Education Law of 1909, § 862, which came from Consolidated School Law, L. 1894, ch. 556, tit. 14, § 3.

Section 902 of the Education Law of 1909 is now covered by sections 946 and 947.

ARTICLE 36*

Schools for Colored Children

Section 920. No exclusion on account of race or color.
921. Provision for separate schools.
922. Only qualified teachers shall be employed.

§ 920. No exclusion on account of race or color. No person shall be refused admission into or be excluded from any public school in the state of New York on account of race or color.

This section was Education Law of 1909, § 980, which came from L. 1900, ch. 492, § 1.

Section 920 of the Education Law of 1909 is now covered by section 970.

Prohibition against exclusion of certain persons from schools: see Penal Law, § 514.

§ 921. Provision for separate schools. The trustees of any union school district, or of any school district organized under a special act, may, when the inhabitants of any district shall so determine, by resolution, at any annual meeting, or at a special meeting called for that purpose, establish separate schools for the instruction of colored children resident therein, and such school shall be supported in the same manner and receive the same care, and be furnished with the same facilities for instruction, as the white schools therein.

This section was Education Law of 1909, § 981, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 29.

Section 921 of the Education Law of 1909 is now covered by section 971.

Separation of white and colored pupils for purposes of education: see notes 13 Ann. Cas. 342, Ann. Cas. 1916C 806.

Constitutionality.— The right to provide separate schools for colored children is not qualified by the constitutional provisions providing for a system of free public schools or by the Fourteenth Amendment of the Federal Constitution. People v. School Board, (1900) 161 N. Y. 598, 56 N. E. 81, 48 L. R. A. 118, affirming 44 App. Div. 469, 61 N. Y. S. 330. The establishment of such separate schools for the exclusive use of the different races is not an abridgment of the "privileges or immunities" preserved by the Fourteenth Amendment of the Federal Constitution, nor is such a separation a denial of the equal protection of the laws given to every citizen by this amendment. People v. Gallagher, (1883) 93 N. Y. 438, 45 Am. Rep. 232.

§ 922. Only qualified teachers shall be employed. No person shall be employed to teach any of such schools who shall not, at the time of such employment, be legally qualified.

This section was Education Law of 1909, § 982, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 30.

Section 922 of the Education Law of 1909 is now covered by section 972.

Qualifications of teachers: see supra, § 550.

* This article was article 40 of the Education Law of 1909. Article 36 of the Education Law of 1909 was, "Indian Schools."

ARTICLE 37*

Indian Schools

Section 940. Duties of commissioner regarding Indian children.
941. Co-operation of Indians shall be sought.
942. Rights of Indians and of state shall be guarded.
943. Indian children not entitled to free tuition in public schools.
944. Employment of teachers, et cetera.
945. Required attendance upon instruction.
946. Duties of persons in parental relation to Indian children.
947. Penalty for failure to send children to school.
948. Persons employing Indian children unlawfully to be fined.
949. Teachers' record of attendance.
950. Attendance officers.
951. Arrest of truants.
952. Commissioner of education to contract for keeping of truants.
953. Enumeration.
954. Payment of services herein required.

§ 940. Duties of commissioner regarding Indian children. The commissioner of education shall establish schools in such places and maintain such courses of instruction therein for the education of the Indian children of the state as he shall deem necessary. He shall have general supervision of such education and shall cause to be erected where necessary convenient and suitable school buildings for the accommodation of all the Indian children of the state. He shall also enforce the statutes relating to the education of the Indians and pay from the funds set apart for Indian education any necessary expense incurred thereby.

This section was derived from Education Law of 1909, § 880. It came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 33.
Section 940 of the Education Law of 1909 is now covered by section 990.

* This article was article 36 of the Education Law of 1909. Article 37 of the Education Law of 1909 was, "Compulsory Education of Indians," and its provisions were consolidated in the present article 37 by Education Law of 1910 (ch. 140).

§ 941. Co-operation of Indians shall be sought. In the discharge of the duties imposed by this article, the said commissioner shall endeavor to secure the co-operation of all the several bands of Indians, and for this purpose, shall visit, by himself or his authorized representative, all the reservations where they reside, lay the matter before them in public assembly, inviting them to assist either by appropriating their public moneys to this object, or by setting apart lands and erecting suitable buildings, or by furnishing labor or materials for such buildings, or in any other way which he or they may suggest as most effectual for the promotion of this object.

This section was Education Law of 1909, § 881, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 34.
Section 941 of the Education Law of 1909 is now covered by section 991.

§ 942. Rights of Indians and of state shall be guarded. In any contract which may be entered into with said Indians, for the use or occupancy of any land for school grounds, sites or buildings, care shall be taken to protect the title of the Indians to their lands, and to reserve to the state the right to remove or otherwise dispose of all improvements made at the expense of the state.

This section was Education Law of 1909, § 882, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 35.
Section 942 of the Education Law of 1909 is now covered by section 992.

§ 943. Indian children not entitled to free tuition in public schools. Indian children residing on a reservation are not entitled to free tuition in districts outside the reservation but may be received into the schools of such districts on the approval of the trustees thereof and the commissioner of education.

This section was derived from Education Law of 1909, § 883, which came from Consolidated School Law, L. 1894, ch. 556, tit. 7, § 37.
Section 943 of the Education Law of 1909 is now covered by section 993.

§ 944. Employment of teachers, et cetera. The commissioner of education shall employ all necessary teachers, truant officers and other assistants and employees and fix their salaries as shall be necessary for the proper enforcement of the statutes relating to Indian education.

New. Education Law of 1910 (ch. 140).
Section 944 of the Education Law of 1909 is now covered by section 994.
Status of teachers under Civil Service Law.— Teachers in the Indian schools

of the state are teachers of public schools, within the meaning of Civil Service Law, § 9, and are, therefore, in the unclassified service. Op. Atty.-Gen. (1904) 277.

§ 945. Required attendance upon instruction. 1. Every Indian child between six and sixteen years of age, in proper physical and mental condition to attend school, shall regularly attend upon instruction at a school in which at least the common school branches of reading, spelling, writing, arithmetic, English grammar and geography are taught [1]in English, or upon equivalent instruction by a competent teacher elsewhere than at such school as follows: Every Indian child between fourteen and sixteen years of age not regularly and lawfully engaged in any useful employment or service, and every such child between six and fourteen years of age, shall so attend upon instruction as many days annually during the period between the first days of September and the following July as a public school of the community or district of the reservation, in which such child resides, shall be in session during the same period.

2. If any such child shall so attend upon instruction elsewhere than at the public school, such instruction shall be at least equivalent to the instruction given to Indian children of like age at a school of the community or district in which such child shall reside; and such attendance shall be for at least as many hours of each day thereof, as are required of children of like age at public schools and no greater total amount of holidays and vacations shall be deducted from such attendance during the period such attendance is required than is allowed in public schools for children of like age. Occasional absences from such attendance, not amounting to irregular attendance in a fair meaning of the term, shall be allowed upon such excuses only as would be allowed in like cases by the general rules and practices of public schools.

This section, with the exception noted in the footnote, was Education Law of 1909, § 901, which came from L. 1904, ch. 424, § 3.
Section 945 of the Education Law of 1909 is now covered by section 995.

§ 946. Duties of persons in parental relation to Indian children. Any person in parental relation to an Indian child between six and sixteen years of age in proper physical and mental condition

[1] Words, " in English," added.

to attend school, shall cause such child to attend upon instruction as provided in this article.

This section and section 947 were derived from Education Law of 1909, § 902, which came from L. 1904, ch. 424, § 4.
Section 946 of the Education Law of 1909 is now covered by section 996.

§ 947. Penalty for failure to send children to school. A violation of *this section shall be a misdemeanor, punishable for the first offense by a fine not exceeding five dollars or by imprisonment not exceeding ten days, and for each subsequent offense, by a fine not exceeding twenty-five dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment. Courts of special sessions shall, subject to removal, as provided in *section fifty-seven and fifty-eight of the code of criminal procedure, have exclusive jurisdiction in the first instance to hear, try and determine charges of violation of this section within their respective jurisdictions.

This section was derived from Education Law of 1909, § 902, the text and source of which are contained in the note to section 946, supra.
Section 947 of the Education Law of 1909 is now covered by section 997.

§ 948. Persons employing Indian children unlawfully to be fined. A person, firm, association or corporation shall not employ any Indian child residing on any Indian reservation between six and fourteen years of age, in any business or service whatever, during any part of the term during which the school in the community or district in which such child resides is in session, or shall not employ any Indian child residing on any reservation between fourteen and sixteen years of age, who does not, at the time of such employment present a consent in writing signed by the principal teacher of the reservation to the effect that such child may be employed, and specifying the nature of the service and the duration of such service or employment. Any person, firm, association or corporation who shall employ any Indian child contrary to the provisions of this section shall for each offense forfeit and pay to the principal teacher of the reservation a penalty of twenty-five dollars, the same, when paid, to be used for the support and maintenance of the schools on said reservation.

This section was derived from Education Law of 1909, § 903, which came from L. 1904, ch. 424, § 5.

* So in original.

Section 948 of the Education Law of 1909 is now covered by section 998.

Certain employment of children prohibited: see PENAL LAW, § 485.

Employment of minors in factories: see LABOR LAW, § 70 et seq.

Employment of children in any mercantile or other business: see LABOR LAW, § 162 et seq.

§ 949. Teachers' record of attendance. An accurate record of attendance of all Indian children between six and sixteen years of age shall be kept by the teacher of every Indian school, showing each day, by the year, month, day of the month and day of the week, such attendance, and the number of hours in each day thereof; and each teacher upon whose instruction such Indian child shall attend elsewhere than at the school in the community or district of the reservation where he resides, shall keep a like record of such attendance. Such records shall at all times be open to the principal teacher of the reservation and its attendance officers who may inspect and copy the same and any teacher shall answer all lawful inquiries made by them. A wilful neglect or refusal to keep such a record or answer such inquiries shall be a misdemeanor.

This section was derived from Education Law of 1909, § 904, which came from L. 1904, ch. 424, § 6.

Section 949 of the Education Law of 1909 is now covered by section 999.

§ 950. Attendance officers. The principal teacher of the Indian schools on each reservation shall supervise the enforcement of this article within said reservation and shall appoint subject to the approval of the commissioner of education and remove at pleasure such number of attendance officers as the commissioner of education shall deem necessary, whose jurisdictions shall extend over all school districts on the reservation for which they shall be appointed. And said principal teachers are also vested with the same power and authority as the attendance officers appointed by them.

This section was derived from Education Law of 1909, § 905, which came from L. 1894, ch. 424, § 7.

Section 950 of the Education Law of 1909 is now covered by section 1000.

§ 951. Arrest of truants. Any attendance officer may arrest without warrant anywhere within the state, any Indian child between six and sixteen years of age, found away from his home and who is then a truant from instruction upon which he is lawfully required to attend within the districts of which such attendance officer has jurisdiction. He shall forthwith deliver a child

so arrested either to the person in parental relation to the child, or to the teacher of the school from which said child is then a truant, or in case of habitual or incorrigible truants, shall bring them before a magistrate for commitment to a truant school, as provided in the next section.

This section was Education Law of 1909, § 906, which came from L. 1904, ch. 424, § 8.

Section 951 of the Education Law of 1909 is now covered by section 1001.

§ 952. Commissioner of education to contract for keeping of truants. The commissioner of education may contract with any city or district having a truant school, for the confinement, maintenance and instruction therein of any child who shall be committed to such school as a truant by any magistrate before whom such child shall have been examined upon the charge of truancy. The costs and expenses attending the support and maintenance of any truant, as herein provided, shall be audited by the commissioner of education and paid in the same manner as the expenses of supporting and maintaining the schools on said reservation are paid.

This section was Education Law, § 907, except that the commissioner of education is named in place of the superintendent of Indian schools in the first line. Section 907 of the Education Law of 1909 came from L. 1904, ch. 424, § 9.

Section 952 of the Education Law of 1909 is now covered by section 1002.

§ 953. Enumeration. The commissioner of education shall cause to be taken a complete enumeration of the Indian inhabitants on said reservation; such enumeration to be taken between the first day of May and the first day of August which shall be tabulated showing the name and age of each Indian person on said reservations and in what school district each of such persons resides. The commissioner of education may require any of the teachers employed in the schools on such Indian reservations or other persons to take such enumeration.

This section was derived from Education Law, § 908, which came from L. 1904, ch. 424, § 10.

Section 953 of the Education Law is now covered by section 1003.

§ 954. Payment of services herein required. Each of the attendance officers herein provided for shall receive such sum per day as shall be fixed by the commissioner of education for each

day necessarily employed in enforcing this article; and each person employed in taking and tabulating the census of the residents of said reservations, shall be entitled to receive such compensation as the commissioner of education shall allow. The compensation of truant officers and the expense in taking the enumeration herein provided for shall be audited by the commissioner of education and paid in the same manner as other accounts for the support and maintenance of the schools on said reservations are now paid.

This section was derived from Education Law of 1909, § 909, which came from L. 1904, ch. 424, § 11.

Section 954 of the Education Law of 1909 is now covered by section 1004.

ARTICLE 38

Instruction of Deaf-Mutes and of the Blind

Section 970. Duties of commissioner of education.
971. Persons eligible as pupils to institutions for instruction of the deaf and dumb.
972. Persons eligible as pupils to institutions for instruction of the blind.
973. Support and term of instruction of state pupils.
974. Regulations for admission.
975. Clothing for state pupils.
976. Aid for blind and deaf students.
977. Indigent deaf-mute children.
978. Deaf-mute children improperly cared for.
979. Maintenance of children.
980. Payment of expenses of tuition and maintenance.

§ 970. Duties of commissioner of education. All the institutions for the instruction of the deaf and dumb, and blind, and all other similar institutions, incorporated under the laws of the state, or that may be hereafter incorporated, shall be subject to the visitation of the commissioner of education, and it shall be his duty:

1. To inquire into the organization of the several schools and the method of instruction employed therein.

2. To prescribe courses of study and methods of instruction that will meet the requirements of the state for the education of state pupils.

3. To make appointments of pupils to the several schools, to transfer such pupils from one school to another as circumstances may require; to cancel appointments for sufficient reason.

4. To ascertain by a comparison with other similar institutions, whether any improvements in instruction and discipline can be made; and for that purpose to appoint from time to time, suitable persons to visit the schools.

5. To suggest to the directors of such institutions and to the legislature such improvements as he shall judge expedient.

6. To make an annual report to the legislature on all the matters before enumerated, and particularly as to the condition of the

schools, the improvement of the pupils, and their treatment in respect to board and lodging.

This section was derived from Education Law of 1909, § 920, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 40.

Authority of state board of charities.— The New York Institution for the Blind, which "was incorporated under L. 1831, ch. 214, for the purpose of instructing children who have been born blind or who may have become blind by disease or accident," was held to be, to a certain extent at least, a charitable institution and in so far as charitable, subject to the visitation of the board of charities which could prescribe rules with respect to the reception and retention of inmates therein. People v. Fitch, (1897) 154 N. Y. 14, 47 N. E. 983, 38 L. R. A. 591, reversing 12 App. Div. 581, 39 N. Y. S. 926, 42 N. Y. S. 1131, which affirmed 16 Misc. 464, 39 N. Y. S. 926.

§ 971. Persons eligible as pupils to institutions for instruction of the deaf and dumb. All deaf and dumb persons resident in this state and upwards of twelve years of age, who shall have been resident in this state for one year immediately preceding the application, or, if a minor, whose parent or parents, or, if an orphan, whose nearest friend shall have been resident in this state for one year immediately preceding the application, shall be eligible to appointment as state pupils in one of the deaf and dumb institutions of this state, authorized by law to receive such pupils.

This section was Education Law of 1909, § 921, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 41 pt., as amended by L. 1903, ch. 62, § 1.

§ 972. Persons eligible as pupils to institutions for instruction of the blind. All blind persons of suitable age and possessing the other qualifications prescribed for deaf and dumb state pupils under section nine hundred and twenty-one shall be eligible to appointment to the institutions for the blind in the city of New York, or in the village of Batavia, as follows:

1. All such as are residents of the counties of New York, Kings, Queens, Suffolk, Nassau, Richmond, Westchester, Putnam and Rockland, shall be sent to the institution for the blind in the city of New York.

2. All such who reside in other counties of the state shall be sent to the institution for the blind in the village of Batavia. [1]Blind babies and children, not residing in the city of New York, of the age of twelve years and under and possessing the other qualifications prescribed in the preceding section of this chapter and requiring kindergarten training and instruction shall be eligible to appointment as state pupils in one of the homes for blind

[1] Following sentence new.

babies and children maintained by the International Sunshine Society, Brooklyn Home for the Blind, Crippled and Defective Children and the Catholic Institute for the Blind and any such child may be transferred to the institution for the blind in the city of New York or village of Batavia, to which he or she would otherwise be eligible to appointment, upon arriving at suitable age, in the discretion of the commissioner of education. All such appointments, with the exception of those to the institution for the blind in the village of Batavia, shall be made by the commissioner of education upon application, and in those cases in which, in his opinion, the parents or guardians of the applicants are able to bear a portion of the expense, he may impose conditions whereby some proportionate share of the expense of educating and clothing such pupils shall be paid by their parents, guardians or friends, in such manner and at such times as the commissioner shall designate, which conditions he may modify from time to time, if he shall deem it expedient to do so.

Amended to read as above by L. 1912, ch. 60. The change is indicated in the footnote.

This section was derived from Education Law of 1909, § 922, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 41 pt., as amended by L. 1903, ch. 62, § 1.

§ 973. Support and term of instruction of state pupils. 1. Each pupil so received into any of the institutions aforesaid shall be provided with board, lodging and tuition; and the directors of the institution shall receive an annual appropriation for each pupil so provided for, in quarterly payments, to be paid by the treasurer of the state, on the warrant of the comptroller, to the treasurer of said institution, on his presenting a bill showing the actual time and number of such pupils attending the institution, which bill shall be signed by the president and secretary of the institution, and verified by their oaths.

2. The regular term of instruction of such pupils shall be five years; but the commissioner of education may, in his discretion, extend the term of any pupil for a period not exceeding three years. It shall also be lawful for the commissioner of education to continue such pupils as state pupils for an additional period of three years for the purpose of pursuing a course of study in the higher branches of learning. The number of pupils continued

each year in such course shall not exceed thirty in any one institution and such pupils must be recommended by the trustees of the institution in which they are attendant, before such extension of time is granted. The pupils provided for in this section and in sections nine hundred and seventy-one and nine hundred and seventy-two of this article shall be designated state pupils; and all the existing provisions of law applicable to state pupils now in said institutions shall apply to pupils herein provided for.

Subdivision 2 was amended by L. 1912, ch. 60, and by L. 1912, ch. 223. The amendment by L. 1912, ch. 60, was not incorporated in the amendment by L. 1912, ch. 223. Section 973 was derived from Education Law of 1909, § 923, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 42.

§ 974. Regulations for admission. The commissioner of education may make such regulations and give such directions to parents and guardians, in relation to the admission of pupils into either of the above-named institutions, as will prevent pupils entering the same at irregular periods.

This section was Education Law, § 924, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 43.

§ 975. Clothing for state pupils. 1. The supervisors of any county in this state from which county state pupils may be hereafter appointed to any institution for the instruction of the deaf and dumb, whose parents or guardians are unable to furnish them with suitable clothing, are hereby authorized and required to raise in each year for each such pupil from said county, the sum of thirty dollars.

2. The supervisors of any county in this state from which state pupils shall be sent to and received in the New York institution for the blind, whose parents or guardians shall, in the opinion of the commissioner of education, be unable to furnish them with suitable clothing are hereby authorized and directed, in every year while such pupils are in said institution, to raise and appropriate thirty dollars for each of said pupils, and to pay the sum so raised to the said institution, to be by it applied to furnishing such pupils with suitable clothing while in said institution.

3. If in any case all or any of said moneys are not expended before the expiration of the periods of appointment of such pupils, then the unexpended residue shall go into the general clothing fund of the said institution, to be by it devoted to furnishing state pupils with suitable clothing.

4. If said sums shall not be paid to the said institution within six months after the annual meeting of the supervisors of any of said counties, the sums so unpaid shall bear interest at the rate of seven per centum per annum, from the expiration of said six months until the same be paid.

5. The supervisors of any county in this state from whose pauper institutions pupils shall be sent to the said institution for the blind, shall raise, appropriate and pay to the order of the comptroller of the state, towards the expense of educating and clothing such pupils, a sum equal to that which the county would have to pay to support the pupils as paupers at home. This subdivision does not apply to the counties of New York, Kings, Queens, Nassau and Suffolk.

6. The supervisors, or officers corresponding thereto, of the counties of New York, Kings, Queens, Nassau and Suffolk, from which state pupils shall be sent to and received in the New York institution for the blind, whose parents or guardians shall, in the opinion of the commissioner of education, be unable to furnish them with suitable clothing, are hereby authorized and directed, in every year while such pupils are in said institution, to raise and appropriate fifty dollars for each of said pupils from said counties, respectively, and to pay the sum so raised to the said institution, to be by it applied to furnishing such pupils with suitable clothing while in said institution.

7. If in any year hereafter there shall be any surplus of the amount above required to be paid yearly by the said counties for clothing for pupils from said counties, respectively, then such surplus shall be deducted pro rata the ensuing year from the amount above required to be paid by the said counties respectively.

This section was Education Law of 1909, § 925, which came from Consolidated School Law, L. 1894, ch. 556, tit. 15, § 43-a, as added by L. 1903, ch. 223, § 1. Laws 1839, ch. 200, § 5, as amended by L. 1862, ch. 351, § 1. Laws 1838, ch. 244, § 3, as amended by L. 1864, ch. 386, § 1. Laws 1870, ch. 166, §§ 3, 4. Laws 1871, ch. 166, § 2.

§ 976. Aid for blind and deaf students.[1] 1. Whenever a blind or deaf[2] person, who is a citizen of this state and a pupil in actual attendance at a college, university, technical or professional school located in this state and authorized by law to grant degrees,

[1] Section heading formerly read: "Employment of reader for blind students."
[2] Words "or deaf," new.

other than an institution established for the regular instruction of the blind or deaf,[1] shall be designated by the trustees thereof as a fit person to receive the aid hereinafter provided for, there shall be paid by the state for the use of such pupil the sum of three hundred dollars per annum with which to employ persons to read to such blind[2] pupil from text-books and pamphlets used by such pupil in his studies at such college, university or school, [3]or to aid a deaf student in receiving instruction in such studies.

2. Such moneys shall be paid annually, after the beginning of the school year of such institution, by the treasurer of the state on the warrant of the comptroller, to the treasurer of such institution, on his presenting an account showing the actual number of blind or deaf[1] pupils matriculated and attending the institution, which account shall be verified by the president of the institution and accompanied by his certificate that the trustees have recommended the pupils named in said account as hereinbefore provided.

3. The trustees of any of the said institutions shall recommend no blind or deaf[1] person, who is not regularly matriculated, and who is not in good and regular standing, and who is not working for a degree from the institution in which he is matriculated; and no blind or deaf[1] person shall be recommended, who is not doing the work regularly prescribed by the institution for the degree for which he is a candidate. The moneys so paid to any such institution shall be disbursed for the purposes aforesaid by and under the direction of its board of trustees.

Amended to read as above by L. 1913, ch. 175. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 926, which was re-enacted in the Education Law of 1910 (ch. 140) as section 976.

§ 977. Indigent deaf-mute children. Whenever a deaf-mute child under the age of twelve years shall become a charge for its maintenance on any of the towns or counties of this state, or shall be liable to become such charge, it shall be the duty of the overseers of the poor of such town or of the board of supervisors.

1 Words "or deaf" new.
2 Word "blind," new.
3 Remainder of sentence new.

of such county to place such child in one of the institutions enumerated in the next section.

This section was Education Law of 1909, § 927, which came from L. 1863, ch. 325, § 1, as amended by L. 1870, ch. 180; L. 1871, ch. 548, § 1; L. 1875, ch. 213, § 1.

Applicability.— This section applies only to children who have or who shall be liable to become a public charge. Matter of Lansing, (1915) 89 Misc. 312, 153 N. Y. S. 639.

§ 978. Deaf-mute children improperly cared for. Upon the application of any parent, guardian or friend of a deaf-mute child, within this state, over the age of five years and under the age of twelve years, the overseer of the poor or the supervisor of the town where such child may be, shall place such child in one of the institutions authorized by the laws of eighteen hundred and ninety-two, chapter thirty-six, to receive such pupils, as follows:

1. The New York institution for the deaf and dumb; or,
2. The institution for the improved instruction of deaf-mutes; or,
3. The Le Couteulx Saint Mary's institution for the improved instruction of deaf-mutes in the city of Buffalo; or,
4. The Central New York institution for deaf-mutes in the city of Rome; or,
5. The Albany home school for the oral instruction of the deaf at Albany; or,
6. To any other institution in the state for the education of deaf-mutes as to which the state board of charities shall have filed with the commissioner of education a certificate to the effect that said institution has been duly organized and is prepared for the reception and instruction of such pupils.

This section was derived from Education Law of 1909, § 928.

Section 928 of the Education Law of 1909 came from L. 1863, ch. 325, § 2 pt., as amended by L. 1875, ch. 213, § 2, and from L. 1892, ch. 36, § 1.

§ 979. Maintenance of children. The children placed in said institutions, in pursuance of the last two sections, shall be maintained therein at the expense of the county from whence they came, provided that such expense shall not exceed three hundred and twenty-five dollars each per year, until they attain the age of twelve years, unless the directors of the institution to which a

child has been sent shall find that such child is not a proper subject to remain in said institution.

Amended to read as above by L. 1910, ch. 322. The amendment added twenty-five dollars to the authorized expense for maintenance. With the exception of this change the section was Education Law of 1909, § 929, which came from L. 1863, ch. 325, § 3, as amended by L. 1875, ch. 213, § 3.

Effect of parents' removal on county's liability.— Where a deaf-mute child was placed in a state institution for education for a period of years at the expense of the county wherein the parents then resided, the fact that they removed to another county before the expiration of the period in question did not in any way alter the liability of the county of their original residence for the child's support. Western New York Inst., etc. v. Yates County, (1904) 94 App. Div. 1, 87 N. Y. S. 534.

Action against county for support of deaf-mute.—A claim against a county for the education and maintenance of a deaf-mute under the age of twelve years, admitted to an institution for the instruction of such children, by virtue of a designation made by one of the supervisors of such county, is liquidated, and, where the board of supervisors refuses to audit the claim, an action can be maintained directly against the county to recover thereon. Western New York Inst., etc. v. Broome County, (1913) 82 Misc. 63, 143 N. Y. S. 241.

§ 980. Payment of expenses of tuition and maintenance. The expenses for the board, tuition and clothing for such deaf-mute children, placed as aforesaid in said institutions, not exceeding the amount of three hundred and twenty-five dollars per year, above allowed, shall be raised and collected as are other expenses of the county from which such children shall be received; and the bills therefor, properly authenticated by the principal or one of the officers of the institution, shall be paid to said institution by the said county; and its county treasurer or chamberlain, as the case may be, is hereby directed to pay the same on presentation, so that the amount thereof may be borne by the proper county.

Amended to read as above by L. 1910, ch. 322. The amendment increased the sum allowed for expenses from $300 to $325. With this exception section 980 was Education Law of 1909, § 930, which came from L. 1863, ch. 325, § 4, as amended by L. 1875, ch. 213, § 3.

Section 980 of the Education Law of 1909 is now covered by section 920.

ARTICLE 39

New York State School for the Blind

Section 990. Change of name.
991. Requisites for admission.
992. Applicants from without the state.
993. Applications for admission.
994. Object of institution.
995. Appointment and terms of trustees.
996. Filling vacancies.
997. Trustees entitled to mileage; disabilities.
998. General powers of trustees.
999. Officers, committees and seal.
1000. Secretary.
1001. Treasurer's duties and bond.
1002. Appointment of superintendent, instructors and assistants.
1003. Purchase of equipment.
1004. Duty to provide clothing and pay traveling expenses.
1005. Charges against county.
1006. Accounts against counties and payment thereof.
1007. Reimbursement of counties.
1008. Entitled to publications and may receive bequests and donations.
1009. Records and annual reports.
1010. Payments by state treasurer.
1011. Drafts upon state treasury.
*962. Consent of trustees to construction of sewers.

§ 990. Change of name. The New York state institution for the blind as the same was authorized to be established by chapter five hundred and eighty-seven of the laws of eighteen hundred and sixty-five and the acts supplemental thereto and renamed the "New York state school for the blind" by laws of eighteen hundred and ninety-five, chapter five hundred sixty-three, shall con-

* Section 962, which follows section 1011, above, was an amendment to the Education Law of 1909, by L. 1910, ch. 39, which added section 962 to article 39 of the Education Law of 1909. This added section was omitted from the Education Law of 1910 (ch. 140).

tinue to be known and designated as the " New York state school for the blind."

This section was Education Law, § 940, which came from L. 1895, ch. 563, § 1.

§ 991. Requisites for admission. All blind persons of suitable age and capacity for instruction, who are legal residents of the state, shall be entitled to the privileges of the New York state school for the blind, without charge, and for such a period of time in each individual case as may be deemed expedient by the board of trustees of said school; provided, that whenever more persons apply for admission at one time than can be properly accommodated in the school, the trustees shall so apportion the number received, but each county may be represented in the ratio of its blind population to the total blind population of the state; and provided further, that the children of citizens who died in the United States service, or from wounds received therein during the late rebellion shall take precedence over all others.

This section was Education Law of 1909, § 941, which came from L. 1867, ch. 744, § 1.

§ 992. Applicants from without the state. Blind persons from without the state may be received into the school upon the payment of an adequate sum, fixed by the trustees, for their boarding and instruction; provided that such applicant shall in no case exclude those from the state of New York.

This section was Education Law of 1909, § 942, which came from L. 1867, ch. 744, § 2.

§ 993. Applications for admission. Applications for admission into the school shall be made to the board of trustees in such manner as they may direct, but the board shall require such application to be accompanied by a certificate from the county judge or county clerk of the county or the supervisor or town clerk of the town, or the mayor of the city where the applicant resides, setting forth that the applicant is a legal resident of the town, county and state claimed as his residence.

This section was Education Law of 1909, § 943, which came from L. 1867, ch. 744, § 3, as amended by L. 1872, ch. 616, § 1.

§ 994. Object of institution. The primary object of the school shall be, to furnish to the blind children of the state the best

known facilities for acquiring a thorough education, and train them in some useful profession or manual art, by means of which they may be enabled to contribute to their own support after leaving the school; but it may likewise, through its industrial department, provide such of them with appropriate employment and boarding accommodations as find themselves unable, after completing their course of instruction and training, to procure these elsewhere for themselves. It shall, however, be in no sense an asylum for those who are helpless from age, infirmity or otherwise, or a hospital for the treatment of blindness.

This section was Education Law of 1909, § 944, which came from L. 1867, ch. 744, § 4.

§ 995. Appointment and terms of trustees. The governor shall continue, each alternate year, to appoint, by and with the consent of the senate, three trustees who shall serve for a term of six years. Two of the board must be residents of the county of Genesee, and a majority must be residents within fifty miles of said school.

This section was Education Law of 1909, § 945, which came from L. 1867, ch. 744, § 5.

§ 996. Filling vacancies. In case of the declination of any member of said board of trustees to act under his appointment, or of the occurrence of any other casual vacancy in the board, the governor shall forthwith appoint some suitable person to fill such vacancy, and the member so appointed shall serve out the term of his predecessor.

This section was Education Law of 1909, § 946, which came from L. 1867, ch. 744, § 6. See Op. Atty.-Gen. (1894) 411; Op. Atty.-Gen. (1899) 317.

§ 997. Trustees entitled to mileage; disabilities. The trustees shall receive no compensation as such, but they may allow themselves mileage, at the same rate as that paid to members of the legislature, for any distance actually traveled in the service of the school. Nor shall any trustee be pecuniarily interested in any contract for buildings pertaining to the school, or in furnishing supplies therefor.

This section was Education Law of 1909, § 947, which came from L. 1867, ch. 744, § 7.

Applicability of provisions of State Charities Law.— The actual and necessary traveling expenses of the managers of the State School for the Blind

are to be paid under the provisions of the State Charities Law and the provisions of the Education Law with respect to the allowance of mileage do not apply. Op. Atty.-Gen. (1910) 819.

Mileage and expenses.— A trustee of the State Institution for the Blind at Batavia, New York, may receive ten cents per mile traveling expenses for every mile traveled in the performance of his official duties and he is also entitled to reimbursement for other actual expenses incurred therein. Op. Atty.-Gen. (1896) 169.

§ 998. General powers of trustees. The board of trustees shall have charge of all the affairs of the school, with power to make all necessary by-laws and regulations for their government and the proper management of the school, as well as for the admission of pupils, and to do all else which may be found necessary for the advancement of its humane design.

This section was Education Law of 1909, § 948, which came from L. 1867, ch. 744, § 8.

§ 999. Officers, committees and seal. They shall elect from their own number a president and treasurer, together with such standing committees as they may deem necessary, and adopt a common seal for the school.

This section was Education Law of 1909, § 949, which came from L. 1867, ch. 744, § 9.

§ 1000. Secretary. The board of trustees may elect a secretary, who shall serve during the pleasure of the board, and who shall not be a member thereof, and may fill any vacancy in the said office as often as the same shall occur, and may prescribe his duties and fix his compensation.

This section was Education Law of 1909, § 950, which came from L. 1873, ch. 463, § 2.

Section 1000 of the Education Law of 1909 is now covered by section 650.

§ 1001. Treasurer's duties and bond. 1. The treasurer shall have the custody of all the funds of the school, and pay out the same only upon properly authenticated orders of the board or executive committee.

2. Before entering upon the duties of his office, he shall execute and file in the office of the comptroller, a bond with such sureties and in such amount of penalty as the comptroller shall require and approve, conditioned for the faithful discharge of his duties as such treasurer.

This section was Education Law of 1909, § 951, which came from L. 1867, ch. 744, § 10. as amended by L. 1905, ch. 154, § 1.

Section 1001 of the Education Law of 1909 is now covered by section 651.

§ 1002. Appointment of superintendent, instructors and assistants. The trustees shall have power to appoint a competent and experienced superintendent, who shall be the chief executive officer of the school, together with an efficient corps of instructors and other subordinate officers; prescribe the duties and terms of service of the same; fix and pay their salaries, and for just cause, remove any or all of them from office. They shall likewise employ the requisite number of servants and other assistants in the various departments of the school and pay the wages of the same.

This section was Education Law of 1909, § 951, which came from L. 1867, ch. 744, § 11.

Section 1002 of the Education Law of 1909 is now covered by section 652.

§ 1003. Purchase of equipment. They shall purchase all furniture, apparatus and other supplies necessary to the equipment and carrying on of the school in the most efficient manner.

This section was Education Law of 1909, § 953, which came from L. 1867, ch. 744, § 12.

Section 1003 of the Education Law of 1909 is now covered by section 653.

§ 1004. Duty to provide clothing and pay traveling expenses. 1. When any blind person shall, upon proper application, be admitted into the school, it shall be the duty of his parents, guardians or other friends, to suitably provide such person with clothing at the time of entrance and during continuance therein, and likewise to defray his traveling expenses to and from the school, at the time of entrance and discharge, as well as at the beginning and close of each session of the school, and at any other time when it shall become necessary to send such person home on account of sickness or other exigency.

2. Whenever it shall be deemed *necesary by the trustees to have such person permanently removed from the school, in accordance with the by-laws and regulations thereof, the same shall be promptly removed upon their order, by his parents, guardians or other friends.

This section was Education Law of 1909, § 954, which came from L. 1867, ch. 744, § 13.

Section 1004 of the Education Law of 1909 is now covered by section 654.

§ 1005. Charges against county. 1. If the friends of any pupil from within the state of New York shall fail through neglect or

* So in original.

inability to provide the same with proper clothing or with funds to defray his necessary traveling expenses to and from the school, or to remove him therefrom, as required in the preceding section, the trustees shall furnish such clothing, pay such traveling expenses, or remove such pupil to the care of the overseers of the poor of his township, and charge the cost of the same to the county to which the pupil belongs, provided that the annual amount of such expenditures on account of any one pupil shall not exceed the sum of sixty dollars.

2. And in case of the death of any pupil at the school, whose remains shall not be removed or funeral expenses borne by the friends thereof, the trustees shall defray the necessary burial expenses, and charge the same to his county as aforesaid.

3. Upon the completion of their course of training in the industrial department, the trustees may furnish to such worthy poor pupils as may need it, an outfit of machinery and tools for commencing business, at a cost not exceeding seventy-five dollars each, and charge the same to the proper county as aforesaid.

This section was Education Law of 1909, § 955, which came from L. 1867, ch. 744, § 14, as amended by L. 1873, ch. 463, § 1.

§ 1006. Accounts against counties and payment thereof. On the first day of October in each year, the trustees shall cause to be made out against the respective counties concerned, itemized accounts, separate in each case, of the expenditures authorized by the preceding section, and forward the same to the board of supervisors chargeable with the account. The board shall thereupon direct the county treasurer to pay the amount so charged to the treasurer of the school for the blind, on or before the first day of March next ensuing.

This section was Education Law of 1909, § 956, which came from L. 1867, ch. 744, § 15.

§ 1007. Reimbursement of counties. The counties against which the said accounts shall be made out as aforesaid, shall cause their respective treasurers, in the name of their respective counties, to collect the same, by legal process, if necessary, from the parents or estates of the pupils who have the ability to pay, on whose account the said expenditures shall have been made; provided that at least five hundred dollars' value of the property of such parents

or estate shall be exempt from the payment of the accounts aforesaid.

This section was Education Law of 1909, § 957, which came from L. 1867, ch. 744, § 15.

§ 1008. Entitled to publications and may receive bequests and donations. The school shall be entitled to receive copies of all books and other publications which are distributed gratuitously by the state to township or county libraries, common schools, academies, colleges and societies. It may also receive in the name of the state, bequests or donations of money or any kind of property, but such money or property shall, in all cases, belong to the state, and be subject to its control; provided that the same shall not be diverted from the particular object for which it shall be bequeathed or donated.

This section was Education Law of 1909, § 958, which came from L. 1867, ch. 744, § 17.

§ 1009. Records and annual reports. The board of trustees shall keep full and complete records of their proceedings, and make an annual report of the same to the legislature, at the commencement of the regular session thereof, strictly accounting in detail for their expenditures, on account of the school, during the preceding fiscal year of the state, setting forth the progress and condition of the several departments of the school, making such suggestions concerning its future management as they may deem essential, and submitting proper estimates of the funds needed for its support, as well as for building and all other purposes.

This section was Education Law of 1909, § 959, which came from L. 1867, ch. 744, § 18.

§ 1010. Payments by state treasurer. The state treasurer is hereby directed to pay over to the board of trustees, upon the warrant of the comptroller, all moneys which shall hereafter be appropriated on account of the New York state school for the blind; the general appropriations for the current support of the school, to be paid in equal quarterly installments, and specific appropriations for building and other purposes, to be paid when needed by the trustees.

This section was Education Law of 1909, § 960, which came from L. 1867, ch. 744, § 19.

Authority to make appropriations for schools for blind.— Appropriations by the legislature to a local or private institution for the education and support of the blind are authorized by the provisions of article VIII, section 9, of the constitution, which provides that the legislature shall not be prevented "from making such provision for the education and support of the blind . . . as to it may seem proper." People v. Fitch, (1897) 154 N. Y. 14, 47 N. E. 983, 38 L. R. A. 591, reversing 12 App. Div. 581, 39 N. Y. S. 926, 42 N. Y. S. 1131, which affirmed 16 Misc. 464, 39 N. Y. S. 926.

§ 1011. Drafts upon state treasury. All drafts upon the state treasury on behalf of the school shall be based upon orders of the board of trustees, signed by the president and secretary of the same, and attested by the common seal of the school.

This section was Education Law of 1909, § 961, which came from L. 1867, ch. 744, § 20.

§ 962. Consent of trustees to construction of sewers. The board of trustees of the New York State School for the Blind shall have power and authority to grant to the village of Batavia a license to lay, construct and maintain as a part of the general sewer system of such village, a sewer or sewers in, through, under and along the lands of such school in the village of Batavia, upon such conditions as such board may prescribe.

This section was added to the Education Law of 1909 by L. 1910, ch. 53, which was entitled "An act to amend the Education Law, in relation to the powers of the trustees of the New York State School for the Blind," and which went into effect March 25, 1910. This section was omitted in the enactment of the Education Law of 1910 (ch. 140), which went into effect April 22, 1910. In the edition of the Education Law published by the education department under the date of November 15, 1914, this section is numbered 1012.

ARTICLE 40*

CORNELL UNIVERSITY

Section 1030. Cornell university continued.
1031. Trustees; election of trustees.
1032. Extent of farm and grounds; special constables.
1033. †Object and powers of the corporation.
1034. Extent to which property may be held.
1035. Trustees shall make reports; university subject to visitation of regents.
1036. Restrictions on alienation of property.
1037. State scholarships †at Cornell university.
1038. New York state veterinary college.
1039. New York state college of agriculture.

§ 1030. Cornell university continued. The corporation known as Cornell university, located at Ithaca, is continued with all the rights, and subject to all the liabilities contained in the act of incorporation, being laws of eighteen hundred and sixty-five, chapter five hundred and eighty-five, as amended.

This section was Education Law of 1909, § 1120, which was a new enactment.

Section 1030 of the Education Law of 1909 is now covered by section 1120.

Payments to Cornell University of college land scrip fund: see STATE FINANCE LAW, § 97.

§ 1031. Trustees; election of trustees. 1. The board of trustees of said Cornell university shall hereafter be made up and constituted as follows: the governor, the lieutenant-governor, the speaker of the house of assembly, the commissioner of education, the president of the state agricultural society, the commissioner of agriculture, the librarian of the Cornell library and the president of the said university, shall be trustees thereof ex-officio, and the eldest lineal male descendant of Ezra Cornell shall be a trustee thereof during his life. To fill the vacancies in the board existing among the elective trustees prior to this enactment, the governor shall appoint five trustees subject to confirmation by the senate, one of whom shall be appointed to serve for one year, one

* This article was article 44 of the Education Law of 1909. Article 40 of the Education Law of 1909 was, "Schools for Colored Children."

† So in original.

for two years, one for three years, one for four years, and one for five years, the term of office of each of whom shall commence at the beginning of the commencement week next succeeding his appointment. Prior to the expiration of the term of office of the trustee appointed for one year as above provided and annually thereafter, the governor shall appoint, subject to confirmation by the senate, one trustee for the term of five years, whose term of office shall begin at the expiration of the term of the retiring trustee. In the event of a vacancy occurring among the trustees appointed by the governor, by death or otherwise, the governor, subject to confirmation by the senate, as provided aforesaid, shall appoint a trustee to fill the vacancy for the unexpired term. There shall also be twenty-six elective trustees, fifteen of whom shall be elected by the board of trustees, and ten by the alumni of said university, and one each year by the executive committee of the New York state grange to be elected at the time of the annual meeting of said grange, such trustee so elected to be elected for a term of one year, his term of office to commence at the beginning of the first commencement week subsequent to his election; but at no time shall a majority of the board be of any one religious sect or of no religious sect.

Amended to read as above by L. 1909, ch. 404. This amendment added the second sentence, and in the last sentence changed the number of elective trustees from thirty-one to twenty-six and the number elected by the board of trustees from twenty to fifteen; also struck out "begin at" and inserted "commence at the beginning of," and inserted "week" after "commencement."

2. The board of trustees shall elect each year three trustees, and as many more as may be necessary to fill vacancies, among members elected by them caused by resignation or death. The alumni of said university shall meet annually in Ithaca, on the day within the seven days[1] before commencement, [2]designated by the directors of the Associate Alumni of Cornell University at their regular preceding November meeting. [3]In case the directors at such meeting fail to designate a day, the meeting shall be had upon the same day prior to commencement as that on which it was held in the preceding year. [4]At the meeting of the

[1] Words "within the seven days," new.
[2] Remainder of sentence new.
[3] Following sentence new.
[4] Word "and" omitted. Following sentence was formerly part of second preceding sentence.

alumni at each annual commencement said alumni shall elect two trustees, and as many more as may be necessary to fill vacancies arising from resignations or deaths among the number previously elected by them. Except as herein otherwise provided the term of office of each elective trustee shall be five years from the annual commencement at which he is elected; but if elected by the board of trustees at a meeting thereof during the academic year, his term shall then be five years from the commencement immediately preceding his election; but every trustee shall hold over until his successor is elected or appointed as above provided.

Amended to read as above by L. 1913, ch. 423. The amendments are noted in the footnote. This subdivision so amended was L. 1912, ch. 248. This act amended L. 1909, ch. 404, by changing the word "hereinbefore," at the beginning of the third sentence of the subdivision, to "herein". The amendment of L. 1909, ch. 404, to Education Law of 1909, § 1121, subd. 2, struck out "four" and inserted "three" in the first sentence, and added, "or appointed as above provided", at the end of the last sentence of the subdivision.

3. The election of trustees by the board shall be by ballot, and fifteen ballots shall concur before any one is elected; and twelve shall constitute a quorum for the transaction of business. Who shall be alumni of said university shall be prescribed by its board of trustees. The election of trustees by the alumni shall be by ballot, and shall be conducted in the following manner and under the following provisions: A register of the signature and address of each of the said alumni of the said university shall be kept by the treasurer of the said university at his business office. Any ten or more alumni may file with the treasurer, on or before the first day of April in each year, written nominations of the trustees to be elected by the alumni at the next commencement. Forthwith after such first day of April a list of such candidates shall be mailed by said treasurer to each of the alumni at his address. [1]Such list shall state the vacancies, if any, then existing in the alumni membership of the board of trustees; and the vacancies that will occur by expiration of term at the next ensuing commencement. Each alumnus may vote by transmitted ballot for trustees to be elected by the alumni at any commencement, in accordance with such regulations as to the method and time of voting as may be prescribed by the alumni and approved by the trustees of the university or its executive committee. The

[1] Following sentence new.

candidates to the extent of the number of places to be filled having the highest number of votes upon the first ballot shall be declared elected, provided that each of said candidates has received the votes of at least one-third of all the alumni voting at said election. Of the alumni trustees thus elected, the two receiving the highest number of votes shall fill the vacancies occurring by expiration of term; the others thus elected shall be allotted to fill vacancies, if any, existing otherwise than by expiration of term; the order of allotment to be in the order of the number of votes cast, the candidate receiving the highest number of votes to be allotted the longer unexpired term;[1] but if there shall be a failure to fill all or one or more of the vacancies, caused by expiration of term or otherwise, by reason of the fact that one or more candidates having the highest number of votes as above fail to receive the votes of at least one-third of the alumni voting, then and in that event such vacancies shall be filled by the alumni personally present at said meeting, the election being limited to candidates not elected on the first ballot, if there is a sufficient number thereof, having the highest pluralities, not exceeding two candidates for each place thus to be filled. [2]If any vacancy occur in the alumni membership of the board of trustees, between the last day fixed herein for the filing of nominations with the university treasurer, and the time of the annual meeting of the alumni, herein provided for, then such vacancy shall not be filled for the unexpired term until the next following year, and shall then be filled by nomination and election in the manner hereinbefore prescribed for the election of alumni trustees.

Subdivision 3 was amended to read as above by L. 1912, ch. 248. The changes are indicated in the footnotes.

This section was derived from Education Law of 1909, § 1121. It came from L. 1865, ch. 585, § 2, as amended by L. 1895, ch. 87, § 1; L. 1896, ch. 238, § 1; L. 1905, ch. 97, § 1; L. 1906, ch. 1, § 1.

Section 1031 of the Education Law of 1909 is now covered by section 1121.

§ 1032. Extent of farm and grounds; special constables. The farm and grounds occupied by said corporation, whereupon its buildings are erected, or shall be erected in such manner and to such extent as the trustees may from time to time direct and provide for, shall consist of not less than two hundred acres. For the protection of the grounds, farm buildings and property of the

[1] Sentence to here, new.

[2] Remainder of section new.

university, the supervisor of the town of Ithaca may appoint, upon the recommendation of the board of trustees of said Cornell university, not more than three suitable persons, as special constables, who shall have and exercise within the boundaries of such university grounds, the powers and duties of constables of towns, and whose compensation shall be regulated and paid by said board of trustees of the university.

This section was Education Law of 1909, § 1122, which came from L. 1865, ch. 585, § 3, as amended by L. 1882, ch. 147, § 1.
Section 1032 of the Education Law of 1909 is now covered by section 1122.

§ 1033. Objects and powers of the corporation. The leading object of said corporation shall be to teach such branches of learning as are related to agriculture and the mechanic arts, including military tactics, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life. But such other branches of science and knowledge may be embraced in the plan of instruction and investigation pertaining to the university as the trustees may deem useful and proper. Said university is authorized to establish faculties, departments and branches and carry on its work at any places in this state and to confer any and all literary, scientific, technical and professional degrees, and in testimony thereof award certificates and diplomas. Persons of every religious denomination, or of no religious denomination, shall be equally eligible to all offices and appointments.

This section was Education Law of 1909, § 1123, which came from L. 1865, ch. 585, § 4, as amended by L. 1898, ch. 223, § 1.
Section 1033 of the Education Law of 1909 is now covered by section 1123.

§ 1034. Extent to which property may be held. The said corporation may take and hold real and personal property to such an amount as may be or become necessary for the proper conduct and support of the several departments of education heretofore established or hereafter to be established by its board of trustees, and such property real and personal as has been, or may hereafter be given to said corporation by gift, grant, devise or bequest in trust or otherwise, for the use and purposes permitted by its charter, and in cases of trusts so created, the several trust estates shall be kept distinct, and the interest or income shall be faithfully applied

to the purposes of such trust, in accordance with the provisions of the act or instrument by which the respective trusts were created.

This section was Education Law of 1909, § 1124, which came from L. 1865, ch. 585, § 5, as amended by L. 1882, ch. 147, § 2.
Section 1034 of the Education Law of 1909 is now covered by section 1124.

§ 1035. Trustees shall make reports; university subject to visitation of regents. The trustees of said university shall make all the reports and perform such other acts as may be necessary to conform to the act of congress, entitled "An act donating public lands to the several states and territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two. The said university shall be subject to visitation of the regents of the university of the state of New York.

This section was Education Law of 1909, § 1125, which came from L. 1865, ch. 585, § 7, as amended by L. 1867, ch. 763, § 2.
Section 1035 of the Education Law of 1909 is now covered by section 1125.

§ 1036. Restrictions on alienation of property. The said university grounds, farm, work-shops, fixtures, machinery, apparatus, cabinets and library, shall not be incumbered, aliened or otherwise disposed of by the said trustees, or by any other person, except on terms such as the legislature of the state of New York shall have approved, and any act of the said trustees, or that of any other person which shall have that effect, shall be void.

This section was Education Law of 1909, § 1126, which came from L. 1865, ch. 585, § 8.
Section 1036 of the Education Law of 1909 is now covered by section 1126.

§ 1037. State scholarships in Cornell university. The several departments of study in Cornell university shall be open to applicants for admission thereto at the lowest rates of expense consistent with its welfare and efficiency, and without distinction as to rank, class, previous occupation or locality. But, with a view to equalize its advantages to all parts of the state, the institution shall receive students to the number of one each year from each assembly district in this state, to be selected as hereinafter provided, and shall give them instruction in any or in all the prescribed branches of study in any department of said institution, free of any tuition fee or any incidental charges to be paid to said

university, unless such incidental charges shall have been made to compensate for materials consumed by said students or for damages needlessly or purposely done by them to the property of said university. The said free instruction shall, moreover, be accorded to said students in consideration of their superior ability, and as a reward for superior scholarship in the academies and public schools of this state. Said students shall be selected as the legislature may from time to time direct, and until otherwise ordered as follows:

1. A competitive examination, under the direction of the education department, shall be held at the county court-house in each county of the state, upon the first Saturday in June, in each year, by the city superintendents and the school commissioners of the county.

2. None but pupils of at least sixteen years of age and of six months' standing in the common schools or academies of the state, during the year immediately preceding the examination, shall be eligible.

3. Such examination shall be upon subjects designated by the president of the university and upon question papers prepared under the direction of the commissioner of education.

4. The city superintendents and school commissioners of each county shall immediately after the close of the examination forward to the commissioner of education all answer papers submitted by candidates in such examination, all statements of candidates and a report of the names of candidates in such form as the commissioner of education shall require.

5. In case any candidate who may become entitled to a scholarship shall fail to claim the same, or shall fail to pass the entrance examination at such university, or shall die, resign, absent himself without leave, be expelled or, for any other reason, shall abandon his right to or vacate such scholarship either before or after entering thereupon, then the candidate certified to be next entitled in the same county shall become entitled to the same. In case any scholarship belonging to any county shall not be claimed by any candidate resident in that county, the commissioner of education may fill the same by appointing thereto some candidate first entitled to a vacancy in some other county. In any such case, the president of the university shall at once notify the commissioner

of education and that officer shall immediately notify the candidate next entitled to the vacant scholarship of his right to the same.

6. Any state student who shall make it appear to the satisfaction of the president of the university that he requires leave of absence, for the purpose of earning funds with which to defray his living expenses *which in attendance, may, in the discretion of the president, be granted such leave of absence, and may be allowed a period not exceeding six years from the commencement thereof for the completion of his course at said university.

7. In certifying the qualifications of the candidates, preference shall be given, where other qualifications are equal, to the children of those who have died in the military or naval service of the United States.

8. Notices of the time and place of the examinations shall be given in all the schools having pupils eligible thereto, prior to the first day of January in each year, and shall be published once a week, for three weeks, in at least two newspapers in each county immediately prior to the holding of such examinations. The cost of publishing such notices and the necessary expenses of such examination shall be a charge upon each county, respectively, and shall be audited and paid by the board of supervisors thereof.

9. The commissioner of education shall attend to the giving and publishing of the notices hereinbefore provided for. He may, in his discretion, direct that the examination in any county may be held at some other time and place than that above specified, in which case it shall be held as directed by him. He shall keep full records in his department of all candidates attending such examinations and shall notify candidates of their rights under this chapter. He shall determine any controversies which may arise under the provisions of this chapter. He is hereby charged with the general supervision and direction of all matters in connection with the filling of such scholarships. Students enjoying the privileges of free scholarships shall, in common with the other students* of said university, be subject to all the examinations, rules and requirements of the board of trustees or faculty of said university, except as herein provided.

This section was Education Law of 1909, § 1127, which came from Consolidated School Law, L. 1894, ch. 556, tit. 12, § 1.

* So in original.

Section 1037 of the Education Law of 1909 is now covered by section 1127.

Normal school as "public school."—Under L. 1865, ch. 585, as amended by L. 1872, ch. 654, and L. 1886, ch. 614, which provided for the admission to Cornell University for free instruction, of "one student from each assembly district, annually, to be selected as therein provided," and vested in the school commissioner of each county the power "to select the 'best scholar from each academy and each public school of their respective counties or cities as candidates for the university scholarship,'" it was held that the words "public school" embraced "common" schools only and did not include "normal" schools since the object of the statute clearly was "to furnish an incentive to pupils in the academies and public schools to strive for as high a degree of scholarship as those schools would afford. People v. Crissey, (1887) 45 Hun 19, 9 N. Y. St. Rep. 681.

§ 1038. New York state veterinary college. 1. The state veterinary college, established by chapter one hundred and fifty-three of the laws of eighteen hundred and ninety-four, shall continue to be known as the New York state veterinary college. The object of said veterinary college shall be: To conduct investigations as to the nature, prevention and cure of all diseases of animals, including such as are communicable to man and such as cause epizootics among live stock; to investigate the economical questions which will contribute to the more profitable breeding, rearing and utilization of animals; to produce reliable standard preparations of toxins, antitoxins and other products to be used in the diagnosis, prevention and cure of diseases and in the conducting of sanitary work by approved modern methods; and to give instruction in the normal structure and function of the animal body, in the pathology, prevention and treatment of animal diseases, and in all matters pertaining to sanitary science as applied to live stock and correlatively to the human family.

2. All buildings, furniture, apparatus and other property heretofore or hereafter erected or furnished by the state for such veterinary college shall be and remain the property of the state. The Cornell university shall have the custody and control of said property, and shall, with whatever state moneys may be received for the purpose, administer the said veterinary college, with authority to appoint investigators, teachers and other officers, to lay out lines of investigation, to prescribe the requirements for admission and the course of study and with such other power and authority as may be necessary and proper for the due administration of such veterinary college.

3. Said university shall receive no income, profit or compensation therefor, but all moneys received from state appropriations

for the said veterinary college or derived from other sources in the course of the administration thereof, shall be kept by said university in a separate fund from the moneys of the university, and shall be used exclusively for said New York state veterinary college. Such moneys as may be appropriated to be paid to the Cornell university by the state in any year, to be expended by said university in the administration of said veterinary college, shall be payable to the treasurer of Cornell university in three equal payments to be made on the first day of October, the first day of January, and the first day of April in such year, and within thirty days after the expiration of the period for which each instalment is received the said university shall furnish the comptroller of the state of New York satisfactory vouchers for the expenditure of such instalment.

4. The said university shall expend such moneys and use such property of the state in administering said veterinary college, and shall report to the governor during the month of January in each year, a detailed statement of such expenditures and of the general operations of the said veterinary college.

5. No tuition fee shall be required of a student pursuing the regular veterinary course, who for a year or more immediately preceding his admission to said veterinary college shall have been a resident of this state. The tuition fees charged to other students and all other fees and charges in said veterinary college shall be fixed by Cornell university, and the moneys so received shall be expended for the current expenses of the said veterinary college.

This section was Education Law of 1909, § 1128, which came from L. 1897, ch. 689, § 1.

Section 1038 of the Education Law of 1909 is now covered by section 1128.

Duty to furnish serum to Department of Agriculture.— The New York State Veterinary College is not bound to furnish serum to the Department of Agriculture free of charge except so far as it is financially able to do so within the limits of its appropriation. The Department of Agriculture may, however, purchase such serum from the college paying therefor the actual cost of the production thereof out of the appropriations made to the department under the provisions of the Agricultural Law. Op. Atty.-Gen. (1911) 484.

§ 1039. New York state college of agriculture. The state college of agriculture, established by chapter six hundred and fifty-five of the laws of nineteen hundred and four, shall continue to be known as the New York state college of agriculture at Cornell university. The object of said college of agriculture shall be to improve the agricultural methods of the state, to develop the agricul-

tural resources of the state in the production of crops of all kinds, in the rearing and breeding of live-stock, in the manufacture of dairy and other products in determining better methods of handling and marketing such products, and in other ways; and to increase intelligence and elevate the standards of living in the rural districts. For the attainment of these objects the college is authorized to give instruction in the sciences, arts and practices relating thereto, in such courses and in such manner as shall best serve the interests of the state; to conduct extension work in disseminating agricultural knowledge throughout the state by means of experiments and demonstrations on farms and gardens, investigations of the economic and social status of agriculture, lectures, publication of bulletins and reports, and in such other ways as may be deemed advisable in the furtherance of the aforesaid objects; to make researches in the physical, chemical, biological and other problems of agriculture, the application of such investigations to the agriculture of New York, and the publication of the results thereof. All buildings, furniture, apparatus and other property heretofore or hereafter erected or furnished by the state for such college of agriculture shall be and remain the property of the state. The Cornell university shall have the custody and control of said property, and shall, with whatever state moneys may be received for the purpose, administer the said college of agriculture, with authority to appoint investigators, teachers and other officers and employees, to lay out lines of investigation, to prescribe the requirements for admission and the course of study and with such other power and authority as may be necessary and proper for the due administration of such college of agriculture. Said university shall receive no income, profit or compensation therefor, but all moneys received from state appropriations for the said college of agriculture or derived from other sources in the course of the administration thereof, shall be credited by said university to a separate fund, and shall be used exclusively for said New York state college of agriculture. Such moneys as may be appropriated to be paid to the Cornell university by the state in any year, to be expended by said university in the administration of said college of agriculture, and shall be payable to the treasurer of Cornell university in three equal payments to be made on the first day of October, the first day of January, and the first day of April in such year, and within sixty days after the expiration of the period for

which each instalment is received the said university shall furnish the comptroller vouchers approved by the commissioner of agriculture for the expenditures of such instalment. The said university shall expend such moneys and use such property of the state in administering said college of agriculture as above provided, and shall report to the commissioner of agriculture in each year on or before the first day of December, a detailed statement of such expenditures and of the general operations of the said college of agriculture for the year ending the thirtieth day of September then next preceding. Fees and charges in said college of agriculture shall be fixed by Cornell university, and the moneys received from these sources and from the sales of products shall be credited to a separate fund and shall be used for the current expenses of the said college of agriculture.

This section was Education Law of 1909, § 1129, which came from L. 1906, ch. 218, § 1.

Section 1039 of the Education Law of 1909 is now covered by section 1129.

Authority to grant sabbatic leave.— The board of trustees of Cornell University is authorized to grant a sabbatic leave to professors in the New York College of Agriculture. Op. Atty.-Gen. (1912) 263.

ARTICLE 41*

STATE SCHOOL OF AGRICULTURE AT SAINT LAWRENCE UNIVERSITY

Section 1050. Corporate name.
1051. Objects and purposes of school.
1052. Supervision and control of school.
1053. Maintenance. (Added by L. 1910, ch. 443.)

§ 1050. Corporate name. The school of agriculture established by chapter six hundred and eighty-two of the laws of nineteen hundred and six shall continue to be known as the New York State School of Agriculture of the St. Lawrence University.

Amended to read as above by L. 1910, ch. 443.

The amendment inserted the word "The" before "St. Lawrence University" in the last line of the section.

This section was Education Law of 1909, § 1140, which was a new enactment.

Section 1050 of the Education Law of 1909 is now covered by section 1140.

§ 1051. Objects and purposes of school. Such school shall have for its objects and purposes:

1. The elementary and practical instruction of pupils attending such school in agriculture and allied subjects.

2. The giving of instruction by means of schools, lectures and other university extension methods for the promotion of agricultural knowledge.

3. The conducting of investigations and experiments for the purpose of ascertaining the best method of fertilization of fields, gardens and plantations and the best modes of tillage and farm management and improvement of live-stock.

4. The printing of leaflets and the dissemination of agricultural knowledge by means of lectures and otherwise; the printing and free distribution of the results of such investigations and experiments, and the publication of bulletins containing such information as may be deemed desirable and profitable in promoting the agricultural interests of the state, such work to be conducted as far as practicable in harmony with the college of agriculture at Cornell university.

This section was Education Law of 1909, § 1141, which came from L. 1906, ch. 682, § 3.

Section 1051 of the Education Law of 1909 is now covered by section 1141.

* This article was article 45 of the Education Law of 1909. Article 41 of the Education Law of 1909 was, "School Census."

§ 1052. Supervision and control of school. The board of trustees of The St. Lawrence university shall have the general care, supervision and control of such school, and of all its affairs, and to carry out its object and purposes shall:

1. Employ and at pleasure remove officers, teachers, clerks, assistants and such other persons as it shall deem necessary to the proper conduct of said school; and fix their compensation.

2. Adopt rules not inconsistent with law controlling the affairs of such school.

3. Prescribe the courses of instruction and the methods of investigation and experiments to be followed in such school.

4. Acquire by deed, gift, devise, or lease, real property suitable for practical and experimental agriculture, horticulture and forestry, and manage the same for the benefit of said school, devoting any income that may be derived therefrom to the maintenance thereof, provided, however, that no land shall be purchased with funds furnished by the state, unless a special appropriation is made therefor.

Amended to read as above by L. 1910, ch. 443.

This section was Education Law of 1909, § 1142, which came from L. 1906, ch. 682, § 4.

Section 1052 of the Education Law of 1909 is now covered by section 1142.

Status of teachers under the Civil Service Law.— The teaching staffs of the state schools of agriculture at Alfred University, at Morrisville, Madison county, and at St. Lawrence University, are in the unclassified service as defined by section 9 of the Civil Service Law. Other employees in the schools paid by the state are in the classified service. Op. Atty.-Gen. (1912) 111. See also §§ 1072, 1093.

§ 1053. Maintenance. 1. Prior to the first day of October in each year the treasurer of The St. Lawrence university shall file with the comptroller his bond, with an incorporated surety company authorized to do business in the state of New York as surety, in a penalty equal to one-fourth of the amount appropriated by the legislature for the maintenance of said agricultural school for the succeeding year, conditioned that he will faithfully account for all moneys received by him during the next state fiscal year. After the filing of said bond, the comptroller shall pay over to the said treasurer on the first days of each of the months of October, January, April and July next succeeding, one-fourth part of said appropriation.

2. All bills for the maintenance of said school shall be examined and audited by the executive committee of said board of

trustees; and when so audited and properly certified by the president and secretary of said board, and the audit approved by the commissioner of agriculture, the amount thereof shall be credited by the comptroller against the funds *thereof advanced to said treasurer as above provided.

Added by L. 1910, ch. 443.

* So in original.

ARTICLE 41-A*

State School of Agriculture and Domestic Science at Delhi

Section 1055. Establishment of school.
1056. Management and control.
1057. Powers and duties of board of control.
1058. Objects and purposes of school.
1059. Tuition and fees.
1060. Reports.

§ 1055. Establishment of school. There is hereby established an agricultural and domestic science school, to be located at Delhi, Delaware county, and which shall be designated as the State School of Agriculture and Domestic Science at Delhi.

New. Added by L. 1913, ch. 675.
Section 1055 of the Education Law of 1909 is now covered by section 1163.

§ 1056. Management and control. The care, management and control of said school, property and premises shall be exercised by a board of control, composed of seven trustees. The state commissioner of agriculture and the director of the New York State Agricultural School at Cornell University shall, ex officio, be members of such board. The other five trustees shall be appointed by the governor by and with the consent of the senate. At least two of such trustees shall be residents of the county of Delaware and one of such trustees shall be a person recommended by the state grange, if such recommendation be made. Two of such appointed trustees shall be appointed for a term of two years each and three for a term of four years each. Upon the expiration of the terms of office of such appointed trustees their successors shall be appointed for a term of four years each. Such trustees shall serve for the terms for which they are respectively appointed and until their successors have been appointed and qualified. In case of any vacancy in the office of any trustee his successor shall be appointed for the unexpired term for which he was appointed. Such trustees shall serve without compensation.

New. Added by L. 1913, ch. 675.
Section 1056 of the Education Law of 1909 is now covered by section 1164.

* This is a new article added by L. 1913, ch. 675.

§ 1057. Powers and duties of board of control. The board of control so appointed by the governor shall have the general care, supervision and control of such school and its management and all of its property and affairs, and, to carry out its objects and purposes, shall:

1. Employ and remove teachers, experts, chemists and all necessary clerks, employees and assistants.

2. Adopt rules not inconsistent with the law controlling the affairs of such school.

3. Adopt rules not inconsistent with the law for their own government.

4. Prescribe the course of instruction and the methods of investigation and experiments to be followed in such school.

New. Added by L. 1913, ch. 675.
Section 1057 of the Education Law of 1909 is now covered by section 1165.

§ 1058. Objects and purposes of school. The said school shall have for its objects and purposes:

1. The practical instruction of pupils attending such school in agriculture and allied subjects.

2. The practical instruction of pupils attending such school in domestic science and allied subjects.

3. The giving of an elementary and preparatory course of instruction in agriculture and agricultural science in preparation for the advanced courses in the State School of Agriculture at Cornell University, and also the giving of a more advanced course of practical instruction for the carrying on of agricultural pursuits to such as do not desire to take a course at said university.

4. The conducting of investigations and experiments in southeastern New York for the purpose of ascertaining the best methods of fertilizing fields, gardens and farms, the best methods of tillage and farm management, the best methods of caring for and improving live stock, the best methods of raising the standard of milk production, and for the purpose of stimulating agricultural pursuits and dairying interests and increasing knowledge by which such industries may be successfully carried on.

New. Added by L. 1913, ch. 675.

§ 1059. Tuition and fees. Students who have been bona fide residents of the state of New York for one year preceding the date

of their admission to said school shall be entitled to free tuition. Other fees, if any, in the said school, and any moneys received for tuition from students not residents of the state of New York, or from the sale of products, or from any other source, shall be reported and forwarded monthly to the state treasurer as required by the state finance law, and may be reappropriated toward the maintenance of said school.

New. Added by L. 1913, ch. 675.
Section 1059 of the Education Law of 1909 is now covered by section 1167.

§ 1060. Reports. The board of control shall report to the commissioner of agriculture annually, on or before the first day of December, a detailed statement of all expenditures and of the general operations of the said school for the year ending the thirtieth day of September then next preceding; and a copy of such report shall be transmitted to the legislature.

New. Added by L. 1913, ch. 675.
Section 1060 of the Education Law of 1909 is now covered by section 1168.

ARTICLE 42*

State School of Agriculture at Alfred University

Section 1070. Corporate name.
1071. Objects and purposes of school.
1072. Supervision and maintenance of school.

§ 1070. Corporate name. The school of agriculture established by chapter two hundred of the laws of nineteen hundred and eight shall continue to be known as the New York state school of agriculture at Alfred university.

This section was Education Law of 1909, § 1160, which came from L. 1908, ch. 200, § 1.
Section 1070 of the Education Law of 1909 is now covered by section 1178.

§ 1071. Objects and purposes of school. The objects of the New York state school of agriculture at Alfred university shall be to give elementary and practical instruction in agriculture and kindred subjects; to conduct, for the improvement of such instruction, investigations and experiments in agricultural methods and resources in western New York, and in means and methods for the care and improvement of live stock; to stimulate agricultural pursuits, and to increase knowledge by which such industry may be successfully carried on; such work shall be co-ordinated so far as practicable with that at the New York state college of agriculture at Cornell university; and furnish both a practical training for the pursuit of agriculture, and complemental training, preliminary to advanced courses in said state college of agriculture at Cornell university.

This section was Education Law of 1909, § 1161, which came from L. 1908, ch. 200, § 3.
Section 1071 of the Education Law of 1909 is now covered by section 1179.

§ 1072. Supervision and maintenance of school. Alfred university shall have the custody and control of the property of said New York state school of agriculture, and shall, with whatever moneys may be received for the purpose, administer the said school of agriculture with authority to appoint teachers, investigators, and other officers and employees, to prescribe the requirements

* This article was article 46 of the Education Law of 1909. Article 42 of the Education Law of 1909 was, "Libraries."

for admission, and the courses of study to be pursued, and with such other power and authority as will secure necessary and adequate administration of such school. And in order to secure unity and harmony in education in agriculture in the state of New York, the state commissioner of agriculture, the director of the New York state college of agriculture at Cornell university, and a person to be annually elected or appointed by the state grange, shall be ex officio members of the board of managers to be appointed annually by the trustees of Alfred university, to have immediate management of the said state school of agriculture. Alfred university shall receive no income, profit or compensation therefor, but all moneys received from appropriations for the said school of agriculture shall be credited by said university to a separate fund, and shall be used exclusively for said New York state school of agriculture. Such moneys as may be appropriated by the state to Alfred university, for said state school of agriculture, shall be payable to the treasurer of Alfred university upon vouchers furnished to the comptroller. The said university shall expend such moneys and use such property of the state in administering said school of agriculture as above provided, and shall report to the commissioner of agriculture annually, on or before the first day of December, a detailed statement of such expenditures and of the general operations of the said school of agriculture for the year ending the thirtieth day of September then next preceding; and a copy of such report shall be transmitted to the legislature. Students bona fide residents of the state of New York for one year preceding the date of their admission shall be entitled to free tuition. Other fees and charges if any in the said school of agriculture, and any moneys received from tuitions paid by students not residents of the state of New York, and from the sales of products shall be reported and forwarded monthly to the state treasurer as required by the state finance law, and may be reappropriated toward the maintenance of said school of agriculture.

This section was Education Law of 1909, § 1162, which came from L. 1908, ch. 200, § 3.

ARTICLE 42-A*

State School of Agriculture at Cobleskill

Section 1075. Establishment and corporate name.
1076. Objects and purposes of school.
1077. Management and control of school.
1078. Powers and duties of board of trustees.

§ 1075. Establishment and corporate name. There is hereby established in the town of Cobleskill, Schoharie county, a school of agriculture to be known as the Schoharie State School of Agriculture.

New. Added by L. 1911, ch. 852.

§ 1076. Objects and purposes of school. Such school shall have for its objects and purposes:

1. The instruction of pupils attending such school in agriculture, mechanic arts and home making.

2. The giving of instruction throughout the state by means of schools, lectures and other university extension methods for the promotion of agricultural knowledge.

3. The conducting of investigations and experiments for the purpose of ascertaining the best methods of fertilization of fields, gardens and plantations and the best modes of tillage, farm management and improvement of live stock.

4. The printing of leaflets and the dissemination of agricultural knowledge by means of lectures and otherwise; printing and free distribution of the results of such investigations and experiments, and the publication of bulletins containing such information as may be deemed desirable and profitable in promoting the agricultural interests of the state.

New. Added by L. 1911, ch. 852.

§ 1077. Management and control of school. The care, management and control of the school, property and premises shall be exercised by a board of seven trustees of which the commissioner of education and the commissioner of agriculture shall be ex officio members, with the same powers and duties as other members

* This is a new article, being added by L. 1911, ch. 852.

thereof. The other five trustees shall be appointed by the governor. At least three of the trustees so appointed shall be residents of the county of Schoharie and one of them shall be a resident of the town of Cobleskill. Trustees first appointed hereunder shall be appointed for such terms that the term of one trustee shall expire each year and their terms shall be designated by the governor in their certificates of appointment. A successor to any such trustees shall be appointed for a full term of five years. A vacancy in the office of trustee shall be filled for the remainder of the unexpired term. Such trustees shall serve without compensation.

New. Added by L. 1911, ch. 852.

§ 1078. Powers and duties of board of trustees. The board of trustees of such school shall have the general care, supervision and control of such school and of all of its affairs, and to carry out its objects and purposes shall:

1. Employ and at pleasure remove teachers, experts, chemists and all necessary clerks and assistants;

2. Adopt rules not inconsistent with law controlling the affairs of such school and regulating the meetings and organization of such board;

3. Prescribe the course of instruction and the methods of investigation and experiments to be followed in such school.

The board of trustees shall report to the commissioner of agriculture annually, on or before the first day of December, a detailed statement of such expenditures and of the general operations of the said school of agriculture for the year ending the thirtieth day of June then next preceding, and a copy of such report shall be transmitted to the legislature. Students, bona fide residents of the state of New York for one year preceding the date of their admission, shall be entitled to free tuition. Other fees and charges, if any, in the said school of agriculture, and any moneys received from tuition paid by students not residents of the state of New York, and from the sale of products, shall be reported and forwarded monthly to the state treasurer as required by the state finance law.

Amended to read as above by L. 1916, ch. 118, § 34. This section was L. 1911, ch. 852, and the amendment by L. 1916, ch. 118, § 34, changed the fiscal year from September to June, and struck out the words, "and may be reappropriated toward the maintenance of said school of agriculture," which were at the end of the section as the same was enacted by L. 1911, ch. 852.

ARTICLE 43*

State School of Agriculture at Morrisville

Section 1090. Corporate name.
1091. Objects and purposes of school.
1092. Management and control of school.
1093. Powers and duties of board of trustees.
1094. Power to acquire real estate; proceedings therefor.

§ 1090. Corporate name. The school of agriculture established by chapter two hundred one of the laws of nineteen hundred and eight shall continue to be known as the New York state school of agriculture at Morrisville.

This section was Education Law of 1909, § 1080, which came from L. 1908, ch. 201, § 1.

Section 1090 of the Education Law of 1909 is now covered by section 52.

§ 1091. Objects and purposes of school. Such school shall have for its objects and purposes:

1. The elementary and practical instruction of pupils attending such school in agriculture and all allied subjects, including domestic science.

2. The giving of instruction in agriculture and agricultural science preparatory to the more advanced courses in the state college of agriculture at Cornell to which end the work shall be conformed as far as practicable with that of the last named institution and also the giving of elementary and practical instruction for the carrying on of agricultural pursuits to such as do not desire the more advanced course.

3. The conducting of investigations and experiments in central New York for the purpose of ascertaining the best methods of fertilizing fields, gardens and plantations and the best modes of tillage and farm management and the care and improvement of live stock.

This section was Education Law of 1909, § 1181, which came from L. 1908, ch. 201, § 2.

Section 1091 of the Education Law of 1909 is now covered by section 53.

* This article was article 47 of the Education Law of 1909. Article 43 of the Education Law of 1909 was, "University of the State of New York."

§ 1092. Management and control of school. The care, management and control of said school, property and premises shall be exercised by a board of seven trustees. The state commissioner of agriculture and the director of the New York state agricultural school at Cornell University, shall, ex officio, be members of the board of trustees. The other five trustees shall be appointed by the governor by and with the consent of the senate. At least two of such trustees shall be residents of the county of Madison. One of such trustees shall be a person recommended by the state grange, if such recommendation be made. Two of such appointed trustees shall be appointed for a term of two years each and three for a term of four years each. Upon the expiration of the terms of office of such appointed trustees their successors shall be appointed for a term of four years each. Such trustees shall serve for the terms for which they are respectively appointed and until their successors have been appointed and qualified. In case of any vacancy in the office of any trustee his successor shall be appointed for the unexpired term for which he was appointed. Such trustees shall serve without compensation as such, except that there shall be allowed to said board for clerical and other assistance that may be required in the discharge of their duties, a sum not to exceed fifteen hundred dollars per annum, which may be paid in whole or in part to one of the appointed members of said board, to act as secretary and clerk of said board until said school shall be organized.

This section was Education Law of 1909, § 1182, which came from L. 1908, ch. 201, § 3.

Section 1092 of the Education Law of 1909 is now covered by section 54.

§ 1093. Powers and duties of board of trustees. The board of trustees so appointed by the governor shall have the general care, supervision and control of such school and all its affairs and to carry out its objects and purposes:

1. Employ and remove teachers, experts, chemists and all necessary clerks and assistants.

2. Adopt rules not inconsistent with the law controlling the affairs of such school.

3. Prescribe the course of instruction and the methods of investigation and experiments to be followed in such school.

The board of trustees shall report to the commissioner of agriculture annually, on or before the first day of December, a

detailed statement of such expenditures and of the general operations of the said school of agriculture for the year ending the thirtieth day of June then next preceding, and a copy of such report shall be transmitted to the legislature. Students bona fide residents of the state of New York for one year preceding the date of their admission shall be entitled to free tuition. Other fees and charges, if any, in the said school of agriculture, and any moneys received from tuition paid by students not residents of the state of New York, and from the sale of products, shall be reported and forwarded monthly to the state treasurer as required by the state finance law.

Amended to read as above by L. 1916, ch. 118, § 35. This amendment changed the fiscal year from September to June and struck out the words, "and may be reappropriated toward the maintenance of said school of agriculture," which were at the end of the section as the same was enacted by L. 1908, ch. 201, § 7, from which act Education Law of 1909, § 1183, was derived.

Section 1093 of the Education Law of 1909 is now covered by section 55.

Power to dispose of farm stock.— The provisions of the section, coupled with section 37 of the State Finance Law, seems to plainly imply authority in the board of managers to sell and dispose of any stock upon the farm that has become old, injured or unfit for use through any cause, and as the board is charged with the care, management and control of the farm and property, it would appear to be its duty to dispose of such stock in the promotion of the state's interest, but whenever such stock is sold the proceeds arising from the sale thereof should be forwarded monthly to the state treasurer and if new stock is necessary to take the place of stock so sold it should be purchased in the usual way. Op. Atty.-Gen. (1915) 111.

§ 1094. Power to acquire real estate; proceedings therefor. The trustees of said New York State School of Agriculture at Morrisville are hereby authorized to enter upon, take possession of and use the lands and premises known as the "Field" property, in the village of Morrisville, in the county of Madison, being a lot measuring about thirty feet by ninety-four feet, adjoining the grounds of such school and lying to the east of the buildings of such school heretofore acquired by the state from the county of Madison. An accurate survey and map of all such lands shall be made and said trustees shall annex thereto their certificate that the lands therein described have been appropriated for the use of said school. Such map, survey and certificate shall be filed in the office of the county clerk of the county of Madison. The said trustees shall thereupon cause to be served upon the reputed owner or owners of any real property so appropriated, and upon the actual occupant or occupants thereof, if any, a notice of the filing

and of the date of filing of such map, survey and certificate in the office of the county clerk, which notice shall also specifically describe the portion of such real property belonging to the owner or owners which has been so appropriated, if less than the entire estate therein is to be taken. The trustees may, and if the owner or owners of such property or any of them shall be non-residents of the state, or unknown, or if the notice cannot for any reason be personally served upon the owners or all owners within the state, the trustees shall serve the same by publication thereof, once in each week for four consecutive weeks in any newspaper published in the county of Madison. From the time the service of such notice is complete, the entry upon and the appropriation by the State School of Agriculture at Morrisville of the real property therein described for the uses and purposes of said school shall be deemed complete, and such notice, when personally served or published, or both, in substantial compliance with the provisions of this section, shall be conclusive evidence of such entry and appropriation and of the quantity and boundaries of the lands appropriated. The trustees of the school shall cause a duplicate copy of such notice, with an affidavit of due service or publication thereof, or both, as the case may be, to be recorded in the books used for recording deeds in the office of the county clerk of Madison county, and the record of such notice and such proofs of service or publication shall be prima facie evidence of the due service or publication thereof. The failure or neglect to serve personally on any person shall not impair or affect the entry upon or appropriation of such property, if the notice be published. The court of claims shall have jurisdiction to determine the amount of compensation for lands, structures and waters so appropriated.

New. Added by L. 1912, ch. 27.
Section 1094 of the Education Law of 1909 is now covered by section 56.

ARTICLE 43-A*

Retirement Fund for Teachers in State Institutions

Section 1095. Retirement of certain teachers in state institutions and institutions receiving state pupils.
1096. Certificate of retirement upon application.
1097. Retirement upon recommendation of governing body of institution where teacher is employed.
1098. Amount to be paid to such retired teachers.
1099. Time and manner of payments.
1099-a. Employment of teachers who have retired.

§ 1095. Retirement of certain teachers in state institutions and institutions receiving state pupils. Every teacher in a state institution and in an institution for the instruction of the deaf and dumb and the blind, receiving state pupils whose instruction and support are paid for by the state, who, for a period of ten years immediately preceding, has been employed as a teacher in any college, school, institution or teachers' institutes maintained and supported by the state, or in any such institution for the instruction of the deaf and dumb and the blind and who shall have been engaged in teaching in some college, university, school, academy, institution, teachers' institutes or in the public schools of this state or elsewhere during a period aggregating thirty years must, at his request, or may, on the order of the commissioner of education, be retired from such employment.

New. Added by L. 1910, ch. 442, and amended to read as above by L. 1912, ch. 293; L. 1915, ch. 614.

Section 1095 of the Education Law of 1909 is now covered by section 57.

§ 1096. Certificate of retirement upon application. Every such person desiring to be retired under the provisions of section ten hundred and ninety-five of this chapter shall present to and file with the commissioner of education an affidavit signed by himself, or, in case he is mentally or physically incapable of making such affidavit, the affidavit of some person or persons acquainted with the facts, setting forth the number of years of such employment, the place or places where employed, the salary received by

* This is a new article added by L. 1910, ch. 441. Section 1099-a was added by L. 1913, ch. 631.

the applicant at the last place of employment, and upon the filing of such affidavits, the commissioner of education, if he shall be satisfied of the truth of the affidavit, shall issue to such applicant a certificate that such applicant has been retired from active service as a teacher.

New. Added by L. 1910, ch. 441.
Section 1096 of the Education Law of 1909 is now covered by section 58.

§ 1097. Retirement upon recommendation of governing body of institution where teacher is employed. Upon the recommendation of a majority of the members of the board or governing body having in charge any such college, school or institution, that a member of the teaching force be retired on account of mental or physical incapacity for the performance of duty, the commissioner of education may retire such person and issue to such person the certificate set forth in section ten hundred and ninety-six of this chapter, provided such person has been employed for ten years as a teacher in any college, school or institution maintained and supported by the state, or in any such institution for the instruction of the deaf and dumb and the blind and has been engaged in teaching in some college, university, school, academy or institution or in the public schools of this state or elsewhere during a period aggregating twenty years.

New. Added by L. 1910, ch. 441, and amended to read as above by L. 1912, ch. 293; L. 1915, ch. 614.
Section 1097 of the Education Law of 1909 is now covered by section 59.

§ 1098. Amount to be paid to such retired teacher. Every person who shall be retired under the provisions of this article shall be entitled to receive from the state one-half the salary which such person was receiving at the date of such retirement, not to exceed, however,[1] one thousand dollars per annum. In no case shall the payment to any person retired hereunder be less than the sum of three hundred dollars.

New. Added by L. 1910, ch. 441, and amended to read as above by L. 1912, ch. 293. The change made by the amendment is indicated in the footnote.
Section 1098 of the Education Law of 1909 is now covered by section 60.

[1] Remainder of sentence formerly read: " in the case of a supervising official, or principal, one thousand dollars, and in the case of a teacher, seven hundred and fifty dollars."

§ 1099. Time and manner of payments. The payment of the amounts provided in this article to be paid shall be made by the state treasurer on the warrant of the comptroller on the audit of the commissioner of education. Payments shall be made quarterly commencing with the first quarter after the date of issue of the certificate of such retirement. The commissioner of education shall make and enforce such rules and regulations, not inconsistent with the provisions of this article, as he shall deem necessary for properly safeguarding all payments thereunder, including vouchers to be signed by the person to whom such payment is made.

New. Added by L. 1910, ch. 441.
Section 1099 of the Education Law of 1909 is now covered by section 61.

§ 1099-a. Employment of teachers who have retired. Any person who shall have heretofore been or shall hereafter be employed for a period of ten years by the state of New York, as an instructor in any college, school, institute or other educational institution, maintained and supported by the state and who shall have, prior to the expiration of said period of ten years, been employed as an instructor in some college, university, school, academy or other educational institution, in this state or elsewhere for the term of thirty years in the aggregate, and who shall have honorably retired from the service of the state prior to June eighth, nineteen hundred and ten, and who shall have attained the age of seventy years, if a man, and sixty years, if a woman, shall be entitled, upon application to the commissioner of education, to appointment as a substitute in the position which such person shall have last held in the service of the state which position as substitute such person shall thereafter hold for the term of his or her life. The said commissioner of education may hereafter assign any such person to suitable work for the state in any educational institution maintained by the state and no such person shall receive any compensation for any such work so performed other than as hereinafter specified.

Each person so appointed shall be entitled to receive from the state compensation as follows: For the time such person shall be actively so employed two-thirds the salary which such person was receiving from the state in the position wherein such person was employed by the state at the time of his or her retirement from

such service; for such time as such person shall not be actively so employed pursuant to such assignment by the commissioner of education, one-half such previous salary; provided, however, that when not so employed actively, no such persons shall receive compensation at a greater rate than one thousand dollars per annum nor at a lesser rate than three hundred dollars per annum.

New. Added by L. 1913, ch. 631.

ARTICLE 43-B*

State Teachers' Retirement Fund for Public School Teachers

Section 1100. Definitions.
1101. Establishment of state teachers' retirement fund.
1102. State teachers' retirement fund board.
1103. Vacancies; resignations; removal from office.
1104. Officers of board; salary and expenses; meetings.
1105. State treasurer ex-officio treasurer of fund; investments.
1106. Powers of board.
1107. Rules of board.
1108. Contributions by teachers; deductions from salaries.
1109. Retirement of teachers; payment of annuities.
1109-a. Payment of annuities.
1109-b. Application of article to certain counties, cities and districts; voluntary contributions.
1109-c. Service as school commissioner to be counted.

§ 1100. Definitions. The word "teacher" as used in this article includes teachers and principals employed in public schools of the cities and school districts of the state and in schools on the Indian reservations,[1] and shall also include superintendents employed as provided by law in cities and union free school districts having a population of five thousand or more, [2]and district superintendents of schools appointed as provided by law in the supervisory districts of the several counties of the state. [3]Services as such district superintendents or as school commissioners shall be deemed to be teaching in the public schools within the meaning of this article. The words "retirement fund" as used in this article shall mean the New York state teachers' retirement fund for public school teachers as established by this article. [3]The term

* This is a new article, being added by L. 1911, ch. 449. The article as added did not include section 1109-c, which was added by L. 1913, ch. 509.

1 Words "and in schools on the Indian reservations," new.

2 Remainder of sentence new.

3 Following sentence new.

"school commissioner" as used in any section of this article shall be deemed to mean the district superintendent of schools.

New. Added by L. 1911, ch. 449, and amended to read as above by L. 1913, ch. 511. The changes made by the amendment are indicated in the footnotes. Section 1100 of the Education Law is now covered by section 62.

§ 1101. Establishment of state teachers' retirement fund. There is hereby established the New York state teachers' retirement fund for public school teachers which shall consist of:

1. All contributions made by teachers, school districts and cities,[1] as hereinafter provided.

2. The income or interest derived from the investment of the moneys contained in such fund.

3. All donations, legacies, gifts and bequests which shall be made to such fund, and all moneys which shall be obtained from other sources for the increase of such fund.

4. Appropriations made by the state legislature from time to time to carry into effect the purposes of such fund, and which appropriations when made shall be paid into such fund and may be expended in the same manner as other moneys belonging thereto.

New. Added by L. 1911, ch. 449, and amended to read as above by L. 1914, ch. 44. The change made by the amendment is indicated in the footnote. Section 1101 of the Education Law of 1909 is now covered by section 63.

§ 1102. State teachers' retirement fund board. The state teachers' retirement fund board shall consist of five members to be appointed by the commissioner of education as hereinafter provided. One of such members shall be, at the time of his appointment, a superintendent of schools in a city or district; one shall be at the time of his appointment an academic principal, and one shall be at the time of his appointment a teacher engaged in teaching in an elementary school. At least one of such members shall be a woman teacher in the public schools. Such appointments shall be made within ten days after this act takes effect. The members of such board first appointed shall hold office for terms of one, two, three, four and five years from January first, nineteen hundred and twelve, to be designated by the commissioner of education when he appoints such members. Their successors shall

[1] Words "school districts and cities" new.

be appointed for terms of five years. A vacancy occurring in the office of any member shall be filled for the unexpired term.

New. Added by L. 1911, ch. 449.
Section 1102 of the Education Law of 1909 is now covered by section 64.

§ 1103. Vacancies; resignations; removal from office. A vacancy in the office of a member of the board shall be created by death, resignation, refusal to serve, removal from office, or absence from the state for a period of one year. A member of such board may resign by written resignation submitted to the commissioner of education and accepted by him. The commissioner of education may remove a member of such board for cause, after service upon him of written charges and an opportunity to be heard in defense thereof.

New. Added by L. 1911, ch. 449.
Section 1103 of the Education Law of 1909 is now covered by section 65.

§ 1104. Officers of board; salaries and expenses; meetings. There shall be a president, vice-president and secretary of such board, to be elected by a majority vote of the members of the board. The president and vice-president shall be elected for terms of one year. The term of office of the secretary shall be fixed by the board. The secretary need not be a member of the board. His salary or compensation shall be prescribed by the board, not exceeding two thousand dollars a year, subject to the approval of the commissioner of education. The members of the board shall serve without compensation, but they shall be entitled to their expenses actually incurred in attending the meetings of the board and in performing services as members thereof.

The board shall meet annually in the education building at Albany, on the second Wednesday in January, and shall have stated meetings at the same place, at least once in each three months, as determined by the regulations of the board. If a member of the board be absent from two consecutive stated meetings without a reasonable excuse for such absence, accepted by the board, his office shall be declared vacant by the commissioner of education, upon notice being received by him of such unexcused absences, and such vacancy shall be filled as hereinbefore provided.

New. Added by L. 1911, ch. 449.
Section 1104 of the Education Law of 1909 is now covered by sections 66 and 67.

§ 1105. State treasurer ex-officio treasurer of fund; investments. The state treasurer shall be ex-officio treasurer of the retirement fund and shall be the custodian thereof. The moneys belonging thereto shall be deposited by him in banks or trust companies and the law relating to the deposit of state funds in such banks and trust companies shall apply so far as may be to the deposit of moneys belonging to the said retirement fund. The state teachers' retirement fund board shall determine from time to time as to what portion of the retirement fund shall be permanently invested. Such fund shall only be invested in those securities in which the trustees of a savings bank may invest the moneys deposited therein, as provided by section one hundred and forty-six of the banking law. When such board shall determine that any portion of said fund should be so invested, it shall by resolution, duly adopted by a majority vote of the members of the board, direct the treasurer to invest such portion of the fund in any of said securities.

New. Added by L. 1911, ch. 449.
Section 1105 of the Education Law of 1909 is now covered by section 68.

§ 1106. Powers of board. The state teachers' retirement fund board, subject to the provisions of this article and of any other statute, shall have power:

1. To appoint and employ such officers and employees as may be necessary to carry into effect the provisions of this article, and fix their compensation.

2. To prescribe the duties of its secretary and other officers and employees.

3. To conduct investigations into all matters relating to the operation of this article, and subpœna witnesses and compel their attendance to testify before it in respect to such matters, and any member of the board may administer oaths or affirmations to such witnesses.

4. To require boards of education, trustees, and other school authorities, and all officers, having duties to perform in respect to contributions by teachers to the retirement fund, to report to the board from time to time, as to such matters pertaining to the payment of such contributions, as it shall deem advisable, and may prescribe the form of such reports.

5. To draw its warrants upon the state treasurer for the payment of annuities to teachers who have been retired as provided in

this article, and for the purchase of such securities as the board shall have decided to purchase as provided in this article. No payments shall be made from the teachers' retirement fund except by warrant signed by the president of the board, drawn after resolution duly adopted at a meeting of the board by a majority of its members, which adoption shall be attested by the secretary of the board.

New. Added by L. 1911, ch. 449.
Section 1106 of the Education Law of 1909 is now covered by section 69.

§ 1107. Rules of board. The state teachers' retirement fund board shall make rules not inconsistent with the provisions of this article which, when approved by the commissioner of education, shall have the force and effect of law. Such rules shall

1. Provide for the conduct and regulation of the meetings of the board and the transaction of the business thereof.

2. Provide for the enforcement and carrying into effect of the provisions of this article.

3. Prescribe the manner of payment of contributions by teachers to the retirement fund, and the payment of annuities therefrom.

4. Establish a system of accounts showing the condition of such fund, and receipts and expenditures.

5. Prescribe the method of making payments from such fund to annuitants and giving receipts for such payments.

6. Prescribe the forms of warrants, vouchers, receipts, reports and accounts to be used by annuitants and officers having duties to perform in respect to such fund.

7. Regulate the duties of boards of education, trustees, and other officers imposed upon them by this article, in respect to the contributions by teachers to the retirement fund, and the deduction of such contributions from teachers' salaries.

New. Added by L. 1911, ch. 449.

§ 1108. Contributions to fund; deductions from salaries. All teachers employed in the public schools in this state except in those counties, districts or cities in which provision in already made by statute for the retirement of public school teachers and the payment of annuities or pensions to such teachers, who enter into contracts for such employment after the date on which this act takes effect, shall contribute to the teachers' retirement

fund one per centum of the salaries to be paid to such teachers annually according to the terms of such contracts. District superintendents of schools shall contribute to such funds one per centum of the salaries received by them for their services, either from the state or from the towns comprising their supervisory districts, as provided by law. On and after such date all such contracts shall be deemed to have been made subject to the provisions of this article, and the requirement as to such contribution shall become a part of and enter into all such contracts. All school districts and cities shall contribute to such fund an amount equal to that contributed, as above provided, by the teachers employed in the public schools of such districts and cities, to be deducted from the public moneys apportioned thereto by the commissioner of education.

Boards of education, trustees and other school authorities having duties to perform in respect to the payment of salaries to public school teachers in their districts or cities, shall cause to be deducted from each warrant or order issued to any of such teachers for the payment of the salary of such teachers the amount due by such teacher to the teachers' retirement fund. The commissioner of education shall cause to be deducted from the salaries paid to teachers employed in schools on the Indian reservations and to district superintendents of schools the amount required to be contributed by them to the teachers' retirement fund, and shall cause the same to be paid into such fund.

New. Added by L. 1911, ch. 449, and amended to read as above by L. 1913, ch. 511; L. 1914, ch. 44.

§ 1108-a. Method of payment into state treasury. 1. The district superintendent[1] of each supervisory[2] district shall include in his annual report to the commissioner of education, a statement showing the amount required to be deducted from the salaries of teachers in each school district under his supervision, under section eleven hundred and eight of this act.

2. The superintendent of schools of each city shall also include in his annual report to the commissioner of education, a statement showing the amount required to be deducted under the provisions of section eleven hundred and eight of this act from the salaries of teachers employed in such city.

[1] Words "district superintendent" substituted for words "school commissioner."

[2] Word "supervisory" substituted for words "school commissioner."

3. The district superintendent[1] of each supervisory[2] district and the superintendent of each city shall file with the treasurer of the county in which such supervisory[2] district or city is located, a statement showing the amount respectively reported by them to the commissioner of education as provided in subdivisions one and two of this section as being the amount required to be deducted from the salaries of teachers in their respective supervisory[2] districts and cities under the provisions of section eleven hundred and eight of this act. Such statements to the county treasurer shall also respectively show the aggregate amount required to be so deducted from the salaries of teachers employed[3] in each town in such supervisory[2] district and from the salaries of teachers employed in each city.

4. The district superintendent[1] of each supervisory[2] district shall file with the supervisor of each town within such supervisory[2] district at the time he files his certificate of apportionment of public school moneys, a statement showing the amount required to be deducted from the salaries of the teachers employed in each school district in such town. The superintendent of each city shall file with the chamberlain or treasurer of such city a duplicate of the certificate which he is required to file with the county treasurer under subdivision three of this section.

5. When the commissioner of education apportions the money appropriated by the legislature for the support of common schools to the several counties of the state, he shall cause to be determined from the official reports of district[4] and city superintendents the amount required to be deducted from the salaries of the teachers employed in each county who come under the provisions of this act as required by section eleven hundred and eight,[5] and also the amount to be contributed by the school districts and cities, in which such teachers are employed, as provided by said section eleven hundred and eight.

6. The commissioner of education shall include in the certificate which he files with the comptroller showing the amount of

1 Words "district superintendent" substituted for words "school commissioner."

2 Word "supervisory" substituted for words "school commissioner."

3 Words "in each school commissioner district" omitted.

4 Word "district" substituted for words "school commissioners."

5 Remainder of sentence new.

state funds apportioned for the support of common schools to each county, a statement showing the amount required to be deducted from the salaries of teachers in each of such counties, and the amount to be contributed by the school districts and cities in which such teachers are employed,[1] as required under section eleven hundred and eight of this act.

7. The comptroller shall issue his warrant to the state treasurer directing such treasurer to credit to the retirement fund created herein from the appropriation for the support of common schools an amount equal to the aggregate amount required to be deducted from the salaries of teachers in the several counties of the state, together with the aggregate amount of the contributions required to be made by the school districts and cities in which such teachers are employed,[2] as shown by the certificate of the commissioner of education filed with him as directed in subdivision six of this section.

8. The comptroller, in issuing his warrant to the state treasurer for the payment to each county of that portion of the moneys appropriated for the support of common schools and payable on or before March first of each year, shall deduct therefrom an amount equal to the amount required to be deducted from the salaries of teachers, and the amount required to be contributed by the school districts and cities in which such teachers are employed,[3] as shown by the certificate of the commissioner of education filed with the comptroller as required by subdivision six of this section.

9. The county treasurer of each county when paying to the supervisors of the towns of such county and to the chamberlain or treasurer of a city in such county the first half of the money apportioned annually for the support of common schools shall deduct from the amount apportioned to each town and city an amount equal to the amount to be deducted from the salaries of the teachers in such town or city, and the amount to be contributed by the school districts or city,[4] as shown by the certificate

[1] Words "and the amount to be contributed by the school districts and cities in which such teachers are employed," new.

[2] Words "together with the aggregate amount of the contributions required to be made by the school districts and cities in which such teachers are employed," new.

[3] Words "and the amount required to be contributed by the school districts and cities in which such teachers are employed," new.

[4] Words "and the amount to be contributed by the school districts or city," new.

of the district[1] and city superintendents filed with such treasurer as directed by subdivision three of this section.

10. The supervisor of each town shall pay to the collector or treasurer of each school district in such town or to the teachers employed in such districts toward their salaries on the order of the trustees of such districts the amount apportioned to such districts respectively less the amount required to be deducted from the salaries of the teachers in such districts, and the amount to be contributed by the school districts in such towns,[2] as shown by the certificate of the district superintendent[3] filed with such supervisors as directed by subdivision four of this section.

New. Added by L. 1911, ch. 449, and amended to read as above by L. 1914, ch. 44. The changes made by the amendment are indicated in the footnotes.

§ 1109. Retirement of teachers. 1. A teacher who has taught in public schools for a period of twenty-five years, at least the last fifteen years of which period shall have been taught in the public schools[4] in this state[5] shall, upon his retirement from actual service as such teacher, as hereinafter provided,[6] be entitled to an annuity of a sum equal to one-half of the average[7] annual salary of[8] such teacher for the period of five years prior to[9] the time of such retirement, provided that no annuity shall exceed the sum of six hundred dollars.

2. A teacher who has taught in public schools for a period of fifteen years, at least the last nine of which were taught in the public schools in this state[10] who is either physically or mentally incapable of teaching may be retired, and shall, upon his retirement, be entitled to an annuity of as many twenty-fifths of the full annuity for twenty-five years as said teacher has taught years.

3. Such retirement may be had on the request of the teacher, or upon the request of a board of education in a city or union

1 Word "district" substituted for words "school commissioners."

2 Words "and the amount to be contributed by the school districts in such towns," new.

3 Words "district superintendent" substituted for words "school commissioner."

4 Words "in those districts or cities" omitted.

5 Words "which are subject to the provisions of this article" omitted.

6 Words "as hereinafter provided" substituted for words "on and after August first, nineteen hundred and thirteen."

7 Word "average" new.

8 Word "of" substituted for words "paid to."

9 Words "for the period of five years prior to" substituted for word "at."

10 Words "in this state" substituted for words "in those districts or cities which are subject to this article."

free school district. A request for retirement shall be made in writing addressed to state teachers' retirement fund board, accompanied by evidence showing that the teacher named therein is entitled to retirement, and that he has complied with the provisions of this article and the rules of the board relating to the payment of annuities. The board shall pass upon all requests for retirement, and shall determine whether such requests shall be granted.

4. All determinations of the board relative to such requests and the payment of annuities to teachers shall be subject to appeal to the commissioner of education. The provisions of article thirty-four of the education law, relative to appeals, shall apply to appeals from such determinations.

New. Added by L. 1911, ch. 449, and amended to read as above by L. 1914, ch. 44. The changes made by the amendment are indicated in the footnotes.

§ 1109-a. Payment of annuities. 1. A teacher shall not be entitled to an annuity who has not contributed to the retirement fund an amount equal to at least fifty[1] per centum of his annuity. But a teacher who is otherwise entitled to retirement and an annuity under this article, may become an annuitant and entitled to an annuity by making a cash payment to the retirement fund of an amount which when added to his previous contributions to such fund, will equal fifty[1] per centum of his annuity.

2. In case a teacher who shall retire or be retired, is unable to pay in advance the sum required to make up the said fifty[1] per centum of the annuity, the payment of such annuity may be withheld until the portion of the annuity withheld shall equal the sum required to make up said fifty[1] per centum of the annuity.

3. Annuities shall be paid quarterly to the teachers entitled thereto, upon the warrants or orders signed by the president and secretary of the state teachers' retirement fund[2] board. Vouchers or receipts shall be signed in duplicate by annuitants upon receiving the money paid to them. Such duplicate receipts shall be returned to the secretary of the board, and one of them shall be retained in his office and the other shall be filed in the office of the state treasurer.

4. Each annuity shall date from the time when the state teachers' retirement board shall take action upon the request made as herein provided for the retirement of the annuitant.

[1] Word "fifty" substituted for word "thirty."
[2] Word "fund" new.

[1]5. In case an annuity shall be paid hereunder to a teacher who has contributed to a teachers' retirement or pension fund in a city, county or district in accordance with a special or local act applicable thereto, the amount so contributed shall be paid on the order of the state teachers' retirement fund board by the custodian of such local retirement or pension fund in the state retirement fund, and the amount so paid shall be credited to such teacher as a contribution to the state fund. In case an annuity is paid to a teacher who has contributed to the state retirement fund as provided in this article, under a special or local act, applicable to the retirement of teachers in a city, county or district, the amount of such contributions shall be paid by the treasurer of the state teachers' retirement fund into the teachers' retirement or pension fund of such city, county or district, and such amount shall be credited to such teacher as a contribution to such fund.

New. Added by L. 1911, ch. 449, and amended to read as above by L. 1914, ch. 44. The changes made by the amendment are indicated in the footnotes.

§ 1109-b. Application of article to certain counties, cities and districts; voluntary contributions. This article shall not apply to any county, city or district in which the teachers in the public schools thereof are required or authorized to contribute to a teachers' retirement fund, or in which such teachers are entitled to annuities or pensions, in accordance with any special or local act applicable to such county, city or district. Provided, that whenever the state teachers' retirement fund board is satisfied that more than two-thirds of all the teachers employed in the public schools of any such county, city or district are willing to become subject to this article, as shown by a petition duly signed and verified by such teachers, such board shall issue its order directing that on and after the date thereof this article shall apply to such county, city or district. A copy of such order shall be mailed to the several teachers employed in the county, city or district to which such order relates and to the boards of education, trustees or other school authorities therein, and thereupon the provisions of this article shall apply to such county, city or district to the same extent and for the same purposes as to the other counties, cities and districts of the state. Thereupon the organization or society created under the said local or special act applicable to a county, city or district shall be dissolved and discontinued and the treasurer or other custodian of the funds of such organization

[1] Subd. 5 new.

or society shall pay into the state treasury any funds in his possession belonging to the said organization or society, after paying any outstanding obligations other than annuities. Such funds shall be credited to the retirement fund provided for herein. All persons who had been placed upon the retired list pursuant to the provisions of such local or special act, previous to the date when such local organization or society determined to come under the provisions of this act, shall become annuitants under this act and shall be entitled to receive the same amount which they would have been entitled to receive under the provisions of their retirement under said local or special act had such organization or society created thereunder not been dissolved and discontinued. Upon the execution and service of such order the teachers employed in the county, city or district to which such order relates, shall contribute one per centum of their salaries to the retirement fund and they shall be entitled to all the privileges thereof, under the conditions and restrictions imposed by this article and the rules of the board.

New. Added by L. 1911, ch. 449.

Transfer of fund from local pension association to retirement fund board.—Upon consideration of the petition of more than two-thirds of the public school teachers of the city of Yonkers that they be admitted to the state teachers' retirement fund for public school teachers under article 43-B and section 1109-b, the state teachers' retirement fund board made an order that said article 43-B of the Education Law should apply to the city of Yonkers and made a demand upon the custodian of the fund held by the trustees of the Yonkers Public School Teachers' Retirement Fund Association for the payment over of the moneys, which demand was refused; on granting a peremptory writ of mandamus for a transfer of the fund, it was held that said fund was a public one made up as provided by law from contributions, one per cent of teachers' salaries, and five per cent of all excise moneys, together with forfeitures and deductions, and that the members of the local association had no vested right therein. Matter of Bristol, (1916) 93 Misc. 626, 158 N. Y. S. 503.

§ 1109-c. Service as school commissioner to be counted. In computing the term of service of a teacher for the purpose of granting an annuity to such teacher under the provisions of this article, the time during which any such teacher shall have filled the office of school commissioner as defined in section three hundred of the education law, being chapter twenty-one of the laws of nineteen hundred and nine, and which office was abolished by chapter six hundred and seven of the laws of nineteen hundred and ten, prior to the time this amendment takes effect, shall be included.

New. Added by L. 1913, ch. 509.

ARTICLE 44*

LIBRARIES

Section 1110. State library, how constituted.
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1141. Penalty for disobedience to library law, rules or orders.

* This article was article 42 of the Education Law of 1909. Article 44 of the Education Law of 1909 was, "Cornell University."

§ 1110. State library, how constituted. All books, pamphlets, manuscripts, records, archives and maps, and all other property appropriate to a general library, if owned by the state and not placed in other custody by law, shall be in charge of the regents and constitute the state library.

This section was Education Law of 1909, § 1020, which came from the University Law, L. 1892, ch. 378, § 15.

§ 1111. State medical library. The state medical library shall be a part of the New York state library under the same government and regulations and shall be open for consultation to every citizen of the state at all hours when the state library is open and shall be available for borrowing books to every accredited physician residing in the state of New York, who shall conform to the rules made by the regents for insuring proper protection and the largest usefulness to the people of the said medical library.

This section was Education Law of 1909, § 1021, which came from L. 1891, ch. 377, § 2.

§ 1112. Manuscript and records "on file." Manuscript or printed papers of the legislature, usually termed "on file," and which shall have been on file more than five years in custody of the senate and assembly clerks, and all public records of the state not placed in other custody by a specific law shall be part of the state library and shall be kept in rooms assigned and suitably arranged for that purpose by the trustees of public buildings. The regents shall cause such papers and records to be so classified and arranged that they can be easily found. No paper or record shall be removed from such files except on a resolution of the senate and assembly withdrawing them for a temporary purpose, and in case of such removal a description of the paper or record and the name of the person removing the same shall be entered in a book provided for that purpose, with the date of its delivery and return.

This section was Education Law of 1909, § 1022, which came from University Law, L. 1892, ch. 378, § 16.

§ 1113. State library, when open; use of books. The state library shall be kept open not less than eight hours every week day in the year except the legal holidays known as Independence day, Thanksgiving day and Christmas day, and members of the

legislature, judges of the court of appeals, justices of the supreme court, and heads of state departments may borrow from the library books for use in Albany, but shall be subject to such restrictions and penalties as may be prescribed by the regents for the safety or greater usefulness of the library. Others shall be entitled to use or borrow books from the library only on such conditions as the regents shall prescribe.

This section was Education Law of 1909, § 1023, which came from University Law, L. 1892, ch. 378, § 17, as amended by L. 1907, ch. 184, § 1.

§ 1114. Duplicate department. The regents shall have charge of the preparation, publication and distribution, whether by sale, exchange or gift, of the colonial history, natural history and all other state publications not otherwise assigned by law. To guard against waste or destruction of state publications, and to provide for the completion of sets to be permanently preserved in American and foreign libraries, the regents shall maintain a duplicate department to which each state department, bureau, board or commission shall send not less than five copies of each of its publications when issued, and after completing its distribution, any remaining copies which it no longer requires. The above, with any other publications not needed in the state library, shall be the duplicate department, and rules for sale, exchange or distribution from it shall be fixed by the regents, who shall use all receipts from such exchanges or sales for expenses and for increasing the state library.

This section was Education Law of 1909, § 1024, which came from University Law, L. 1892, ch. 378, § 19, as amended by L. 1895, ch. 859, § 1; L. 1901, ch. 507, § 14.

§ 1115. Transfers from state officers. The librarian of any library owned by the state, or the officer in charge of any state department, bureau, board, commission or other office may, with the approval of the regents, transfer to the permanent custody of the state library or museum any books, papers, maps, manuscripts, specimens or other articles which, because of being duplicates or for other reasons, will in his judgment be more useful to the state in the state library or museum than if retained in his keeping.

This section was Education Law of 1909, § 1025, which came from University Law, L. 1892, ch. 378, § 20.

§ 1116. Other libraries owned by the state. The report of the state library to the legislature shall include a statement of the total number of volumes or pamphlets, the number added during the year, with a summary of operations and conditions, and any needed recommendation for safety or usefulness for each of the other libraries owned by the state, the custodian of which shall furnish such information or facilities for inspection as the regents may require for making this report. Each of these libraries shall be under the sole control now provided by law, but for the annual report of the total number of books owned by or bought each year by the state, it shall be considered as a branch of the state library and shall be entitled to any facilities for exchange of duplicates, inter-library loans or other privileges properly accorded to a branch.

This section was Education Law of 1909, § 1026, which came from University Law, L. 1892, ch. 378, § 21.

§ 1117. Public and free libraries and museums. All provisions of this section and of sections eleven hundred and eighteen to eleven hundred and thirty-four inclusive shall apply equally to libraries, museums, and to combined libraries and museums, and the word "library" shall be construed to include reference and circulating libraries and reading-rooms.

This section was Education Law of 1909, § 1027, which came from University Law, L. 1892, ch. 378, § 35.

§ 1118. Establishment. By majority vote at any election, any county,[1] city, village, town, school district, or other body authorized to levy and collect taxes, or by vote of its common council, or by action of a board of estimate and apportionment or other proper authority, any city, or by vote of its trustees, any village, may establish and maintain a free public library, with or without branches, either by itself or in connection with any other body authorized to maintain such library. Whenever twenty-five taxpayers shall so petition, the question of providing library facilities shall be voted on at the next election or meeting at which taxes may be voted, provided that due public notice shall have been given of the proposed action. A municipality or district named in this section may raise money by tax to establish and maintain a public library or libraries, or to provide a building

[1] Word "county" new.

or rooms for its or their use, or to share the cost as agreed with other municipal or district bodies, or to pay for library privileges under a contract therefor. It may also acquire real or personal property for library purposes by gift, grant, devise or condemnation, and may take, buy, sell, hold and transfer either real or personal property and administer the same for public library purposes. [1]A board of supervisors of a county may contract with the trustees of a public library within such county or with any other municipal or district body having control of such a library to furnish library privileges to the people of the county, under such terms and conditions as may be stated in such contract. The amount agreed to be paid for such privileges under such contract shall be a charge upon the county and shall be paid in the same manner as other county charges.

Amended to read as above by L. 1911, ch. 815. The changes made by the amendment are indicated in the footnotes.

This section was Education Law of 1909, § 1028, which came from University Law, L. 1892, ch. 378, § 36 pt., as amended by L. 1895, ch. 859, § 5; L. 1902, ch. 185, § 1; L. 1907, ch. 606, § 1.

Power to raise money for library purposes.— Prior to the amendment of 1911 the inhabitants of a union free school district in a village having a free public library under the management of a president and officers of a library association, and not being maintained in connection with the school library, had no power to vote to raise by tax a sum to be appropriated to the use of such public library. Op. Atty.-Gen. (1911) 404. In upholding the constitutionality of section 36 and 38 of the former University Law of 1892, the attorney-general said: "Proceeding upon the principle that it is competent for the inhabitants of a town or other municipality to raise money by taxation for the erection and maintenance of school buildings and the operation of schools and for educational purposes generally, as provided by law, it is in my opinion likewise competent for towns and other municipalities, acting through proper agencies, to tax themselves for the establishment or maintenance of a library, or to pay for library privileges, as provided by the enactments of the University Law applicable to the subject matter under consideration, and that such tax is for a purpose within the meaning and protection of the constitution." Op. Atty.-Gen. (1903) 514.

Power to contract for library privileges.— Under this section the board of supervisors of a town has no authority to contract with a city library for the use of such library. Op. Atty.-Gen. (1911) 110.

Qualifications of voters.— The qualifications of voters appear to be same as is required by section 203 for district meetings. Op. Atty.-Gen. (1903) 397. The attorney-general in 1904 also ruled that the question as to the qualification of voters on a proposition to build and maintain a library was controlled by the provisions of former sections 31 (now 53) and 44 (now 55) of the Town Law, and that in order that a person be so qualified where the amount involved was in excess of $500, "he or his wife must be the owner of property assessed upon the last preceding assessment roll of such town; and, in the case of a woman, she may vote where she is the owner of such property so assessed." Op. Atty.-Gen. (1904) 370.

[1] Remainder of section new.

Power to call special election.— The provisions of the former University Law of 1892 as amended authorized the submission by a village of a proposition to establish a library at a valid election called pursuant to its charter but did not authorize the calling of a special election for this purpose. The present section does not appear to have changed the law in this respect. Op. Atty.-Gen. (1903) 279.

Tax as a continuing appropriation.— "A fixed sum of money agreed to be appropriated by a town or other municipality to share in the cost of maintaining a library, continues as an annual appropriation and the amount thereof may be compelled to be levied and collected annually, for the purposes specified, until the agreement entered upon is abrogated." Op. Atty.-Gen. (1903) 514.

§ 1119. Acceptance of conditional gift. By majority vote at any election any municipality or district or by three-fourths vote of its council, any city, or any public library in the university, or any designated branch thereof, if so authorized by such vote of a municipality, district, or council, or of any combination of such voting bodies, may accept gifts, grants, devises or bequests for public library purposes on condition that a specified annual appropriation shall thereafter be made, by the municipality or district or combination so authorizing such acceptance, for maintenance of such library or branches thereof. Such acceptance, when approved by the regents of the university under seal and recorded in its book of charters, shall be a binding contract, and such municipality and district shall levy and collect yearly the amount provided in the manner prescribed for other taxes, and shall maintain any so accepted gift, grant, devise or bequest, intact and make good any impairment thereof.

This section was, with the exception of the final sentence, Education Law of 1909, § 1029.

Section 1029 of the Education Law of 1909 came from University Law, L. 1892, ch. 378, § 36 pt., as amended by L. 1895, ch. 859, § 5; L. 1902, ch. 185, § 1; L. 1907, ch. 606, § 1.

Effect of transfer of library property from board of education to trustees of newly established library.— Under the similar provisions of section 36 of the former University Law of 1892 from which this section is derived, the attorney-general ruled that cities could establish free public libraries and designate the number of trustees thereof who were required to be appointed by the mayor with the consent of the common council, and that as to whether property conveyed upon a condition that it be used for a "district school library" would revert upon a transfer to such trustees by the board of education depended upon the terms of the grant. Op. Atty.-Gen. (1893) 112.

Taxation of bequests to libraries.— A bequest to a library corporation incorporated by the regents of the state of New York and receiving state aid is not exempt from the transfer tax as being a bequest to an "educational" institution. Matter of Francis, (1907) 121 App. Div. 129, 105 N. Y. S. 643, affirmed (1907) 189 N. Y. 554, 82 N. E. 1126. See TAX LAW, § 221.

§ 1120. Subsidies. By vote similar to that required by sections eleven hundred and eighteen and eleven hundred and nineteen money may be granted toward the support of libraries not owned by the public but maintained for its welfare and free use; provided, that such libraries shall be subject to the inspection of the regents and registered by them as maintaining a proper standard, that the regents shall certify what number of the books circulated are of such a character as to merit a grant of public money, and that the amount granted yearly to libraries on the basis of circulation shall not exceed ten cents for each volume of the circulation thus certified by the regents.

This section was Education Law of 1909, § 1030, which came from University Law, L. 1892, ch. 378, § 37 pt., as amended by L. 1890, ch. 481, § 1.
Section 1120 of the Education Law is now covered by section 1030.

§ 1121. Closing of museum; admission fee during certain hours. The trustees of any institution supported under this chapter by public money, in whole or in part, may, so far as consistent with free use by the public at reasonable or specified hours, close any of its museum collections at certain other hours, for study, to meet the demands of special students or for exhibition purposes, and may charge an admission fee at such hours, provided that all receipts from such fees shall be paid into the treasury and be used for the maintenance or enlargement of the institution.

This section was Education Law of 1909, § 1031, which came from University Law, L. 1892, ch. 378, § 37 pt., as amended by L. 1900, ch. 481, § 1.
Section 1121 of the Education Law of 1909 is now covered by section 1031.

§ 1122. Taxes. Taxes, in addition to those otherwise authorized, may be voted by any authority named in section eleven hundred and eighteen and for any purpose specified in sections eleven hundred and eighteen to eleven hundred and twenty inclusive, and shall, unless otherwise directed by such vote, be considered as annual appropriations therefor till changed by further vote, and shall be levied and collected yearly, or as directed, as are other general taxes; and all money received from taxes or other sources for such library shall be kept as a separate library fund and expended only under direction of the library trustees on properly authenticated vouchers.

This section was Education Law of 1909, § 1032, which came from University Law, L. 1892, ch. 378, § 38.
Section 1122 of the Education Law of 1909 is now covered by section 1032.

§ 1123. Trustees. Free public libraries established by action of the voters or their representatives shall be managed by trustees who shall have all the powers of trustees of other educational institutions of the university as defined in this chapter; provided, unless otherwise specified in the charter, that the number of trustees shall be five; that they shall be elected by the legal voters, except that in cities they shall be appointed by the mayor with the consent of the common council, from citizens of recognized fitness for such position; that the first trustees determine by lot whose term of office shall expire each year and that a new trustee shall be elected or appointed annually to serve for five years.

This section was Education Law of 1909, § 1033, which came from University Law, L. 1892, ch. 378, § 39.

Section 1123 of the Education Law of 1909 is now covered by section 1036.

Selection and terms of office of trustees.— Under section 39 of the former University Law of 1892 from which this section is derived, the attorney-general ruled that the trustees of a village library could be appointed by the board of regents, by the trustees of the village or by the legal voters of a village, and their terms of office could be made by the charter to expire simultaneously or in rotation. Op. Atty.-Gen. (1892) 422.

§ 1124. Incorporation. Within one month after taking office, the first board of trustees of any such free public library shall apply to the regents for a charter in accordance with the vote establishing the library.

This section was Education Law of 1909, § 1034, which came from University Law, L. 1892, ch. 378, § 40.

Section 1124 of the Education Law of 1909 is now covered by section 1034.

§ 1125. Use of free public libraries. Every library established under section eleven hundred and eighteen of this chapter shall be forever free to the inhabitants of the locality which establishes it, subject always to rules of the library trustees, who shall have authority to exclude any person who wilfully violates such rules; and the trustees may, under such conditions as they think expedient, extend the privileges of the library to persons living outside such locality.

This section was Education Law of 1909, § 1035, which came from University Law, L. 1892, ch. 378, § 42, as amended by L. 1895, ch. 859, § 6.

Section 1125 of the Education Law of 1900 is now covered by section 1035.

§ 1126. Reports. Every library or museum which receives state aid or enjoys any exemption from taxation or other privilege

not usually accorded to business corporations shall make the report required by section fifty-eight of this chapter, and such report shall relieve the institution from making any report now required by statute or charter to be made to the legislature, or to any department, court or other authority of the state. These reports shall be summarized and transmitted to the legislature by the regents with the annual reports of the state library and state museum.

This section was Education Law of 1909, § 1036, which came from University Law, L. 1892, ch. 378, § 41.
Section 1126 of the Education Law of 1909 is now covered by section 1036.

§ 1127. Injuries to property. Whoever intentionally injures, defaces or destroys any property belonging to or deposited in any incorporated library, reading-room, museum or other educational institution, shall be punished by imprisonment in a state prison for not more than three years, or in a county jail for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

This section was Education Law of 1909, § 1037, which came from University Law, L. 1892, ch. 378, § 43.
Section 1127 of the Education Law of 1909 is now covered by section 1037.
Larceny of public records: see PENAL LAW, § 1296.
Injury to books and articles in public library: see PENAL LAW, § 1428.

§ 1128. Detention. Whoever wilfully detains any book, newspaper, magazine, pamphlet, manuscript or other property belonging to any public or incorporated library, reading-room, museum or other educational institution, for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution, such article or other property may be kept, shall be punished by a fine of not less than one nor more than twenty-five dollars, or by imprisonment in the jail not exceeding six months, and the said notice shall bear on its face a copy of this section.

This section was Education Law of 1909, § 1038, which came from University Law, L. 1892, ch. 378, § 44.
Section 1128 of the Education Law of 1909 is now covered by section 1038.

§ 1129. Transfer of libraries. Any corporation, association, school district or combination of districts may, by legal vote duly approved by the regents, transfer, conditionally as provided in

section eleven hundred and nineteen of this article, or otherwise, the ownership and control of its library, with all its appurtenances, to any municipality, or district, or public library in the university, or any designated branch thereof, and thereafter such transferee shall be entitled to receive any money, books or other property from the state or other sources, to which the transferring body would have been entitled but for such transfer, and the trustees or body making the transfer shall thereafter be relieved of all responsibility pertaining to property thus transferred.

This section was Education Law of 1909, § 1039, which came from University Law, L. 1892, ch. 378, § 45, as amended by L. 1907, ch. 606, § 2.
Section 1129 of the Education Law of 1909 is now covered by section 1039.

§ 1130. Local neglect. If the local authorities of any library supported wholly or in part by state money, fail to provide for the support and public usefulness of its books, the regents shall in writing notify the trustees of said library what is necessary to meet the state's requirements, and on such notice all its rights to further grants of money or books from the state shall be suspended until the regents certify that the requirements have been met; and if said trustees shall refuse or neglect to comply with such requirements within sixty days after service of such notice, the regents may remove them from office and thereafter all books and other library property wholly or in part paid for from state money shall be under the full and direct control of the regents who, as shall seem best for public interests, may appoint new trustees to carry on the library, or may store it, or distribute its books to other libraries.

This section was Education Law of 1909, § 1040, which came from University Law, L. 1892, ch. 378, § 46.

§ 1131. Loans of books from state. Under such rules as the regents may prescribe, they may lend from the state library, duplicate department, or from books specially given or bought for this purpose, selections of books for a limited time to any public library in this state under visitation of the regents, or to any community not yet having established such library, but which has conformed to the conditions required for such loans.

This section was Education Law of 1909, § 1041, which came from University Law, L. 1892, ch. 378, § 47.

§ 1132. Advice and instruction from state library officers. The trustees or librarian or any citizen interested in any public library in this state shall be entitled to ask from the officers of the state library any needed advice or instruction as to a library building, furniture and equipment, government and service, rules for readers, selecting, buying, cataloguing, shelving, lending books, or any other matter pertaining to the establishment, reorganization or administration of a public library. The regents may provide for giving such advice and instruction either personally or through printed matter and correspondence, either by the state library staff or by a library commission of competent experts appointed by the regents to serve without salary. The regents may, on request, select or buy books, or furnish them instead of money apportioned, or may make exchanges and loans through the duplicate department of the state library. Such assistance shall be free to residents of this state as far as practicable, but the regents may, in their discretion, charge a proper fee to nonresidents or for assistance of a personal nature or for other reason not properly an expense to the state, but which may be authorized for the accommodation of users of the library.

This section was Education Law of 1909, § 1042, which came from University Law, L. 1892, ch. 378, § 48.

§ 1133. Apportionment of public library money. Such sum as shall have been appropriated by the legislature as public library money shall be paid annually by the treasurer, on the warrant of the comptroller, from the income of the United States deposit fund, according to an apportionment to be made for the benefit of free libraries by the regents in accordance with their rules and authenticated by their seal; provided, that none of this money shall be spent for books except those approved or selected and furnished by the regents; that no locality shall share in the apportionment unless it shall raise and use for the same purpose not less than an equal amount from taxation or other local sources; that for any part of the apportionment not payable directly to the library trustees the regents shall file with the comptroller proper vouchers showing that it has been spent in accordance with law exclusively for books for free libraries or for proper expenses incurred for their benefit; and that books paid for by the state shall be subject to return to the regents whenever the library shall

neglect or refuse to conform to the ordinances under which it secured them.

This section was Education Law of 1909, § 1043, which came from University Law, L. 1892, ch. 378, § 50.

§ 1134. Abolition. Any library established by public vote or action of school authorities, or under section eleven hundred and eighteen of this chapter, may be abolished only by a majority vote at a regular annual election, ratified by a majority vote at the next annual election. If any such library is abolished its property shall be used first to return to the regents, for the benefit of other public libraries in that locality, the equivalent of such sums as it may have received from the state or from other sources as gifts for public use. After such return any remaining property may be used as directed in the vote abolishing the library, but if the entire library property does not exceed in value the amount of such gifts it may be transferred to the regents for public use, and the trustees shall thereupon be free from further responsibility. No abolition of a public library shall be lawful till the regents grant a certificate that its assets have been properly distributed and its abolition completed in accordance with law.

This section was Education Law of 1909, § 1044, which came from University Law, L. 1892, ch. 378, § 51, as amended by L. 1895, ch. 859, § 7.

§ 1135. Use and care of school library. The school library shall be a part of the school equipment and shall be kept in the school building at all times. [1]Such library shall be devoted to the exclusive use of the school except as otherwise provided by the rules of the commissioner of education and except in a district where there is no free public library, in which case such school library shall be a circulating library for the use of the residents of the district.

The commissioner of education shall prescribe rules regulating

1. The purchase, recording, safekeeping and loaning of books in school libraries, and the use of such books by pupils and teachers in the public schools.

[1] Remainder of section substituted for words "and shall not be used as a circulating library, except as the rules fixed by the commissioner of education shall allow, but no person shall be allowed to borrow more than one volume at a time and shall not keep the same more than two weeks. The board of education or trustees shall appoint a teacher of the schools under their charge as librarian, who, with the trustees, shall be responsible for the safety and proper care of the books, and shall annually, and whenever required, make such reports concerning the library as the commissioner of education may direct."

2. The conditions under which books in a school library in a district in which a public library is situated, may be used by the public.

3. The management of school libraries and their use as circulating libraries by the residents of the districts in which they are situated.

4. The contents and submission of reports of school librarians, teachers and other school authorities as to school libraries.

Amended to read as above by L. 1914, ch. 51. The change made by the amendment is indicated in the footnote.

This section was derived from Education Law of 1909, § 1045, which came from Consolidated School Law, L. 1894, ch. 556, tit. 13, § 2.

§ 1135-a. Librarians of school libraries. In a city or a union free school district *maintaing an academic department or high school the board of education may employ, and fix the compensation of, a person to act as school librarian who may be engaged for all or a part of the time in performance of the duties of the position as may be directed by the said board. The person so employed may be the librarian of the free public library. If possessed of the qualifications prescribed by the commissioner of education a teacher's quota shall be apportioned to such city or union free school district on account of the employment of such librarian. In all other districts the trustees or board of education may appoint a competent person to act as librarian. In case of a failure of a city or union free school district maintaining an academic department or high school to employ a librarian as above provided, the teacher of English in such school shall be the librarian. In case of a failure to appoint a librarian in any other district the teacher, or if there be more than one teacher, the principal teacher, shall act as librarian. The trustees or board of education shall report to the commissioner of education the name and address of the person employed or appointed as librarian.

New. Added by L. 1914, ch. 51.

Librarian as public officer.— The librarian of a library connected with a public school is not a public officer. Bell v. New York, (1899) 46 App. Div. 195, 61 N. Y. S. 709.

§ 1136. Existing rules continued in force. All existing provisions of law and rules established by the superintendent of pub-

* So in original.

lic instruction or by the commissioner of education for the management of district libraries shall hold good as to the management of school libraries till altered by or in pursuance of law.

This section was Education Law of 1909, § 1046, which came from Consolidated School Law, L. 1894, ch. 556, tit. 13, § 3.

§ 1137. Authority to raise and receive money for school library. Each city and school district in the state is hereby authorized to raise moneys by tax in the same manner as other school moneys are raised, or to receive moneys by gift or devise, for starting, extending or caring for the school library.

This section was Education Law of 1909, § 1047, which came from Consolidated School Law, L. 1894, ch. 556, tit. 13, § 4.

§ 1138. Authority to transfer school library property to free public library. Any board of education in any city or union free school district, or any duly constituted meeting in any other district, is hereby authorized to give any or all of its books or other library property to any township or other free public library under state supervision, or to aid in establishing such free public library, provided it is free to the people of such city or district. A receipt from the officers of the said free public library, and an approval of the transfer under seal by the regents of the university, shall forever thereafter relieve the said school authorities of further responsibility for the said library and property so transferred.

This section was Education Law of 1909, § 1048, which came from Consolidated School Law, L. 1894, ch. 556, tit. 13, § 5.

§ 1139. Transfer of property not in charge of librarian. Any books or other library property belonging to any district library, and which have not been in direct charge of a librarian duly appointed within one year, may be taken and shall thereafter be owned by any public library under state supervision, which has received from the regents of the university written permission to collect such books or library property, and to administer the same for the benefit of the public; provided, that said books or other library property shall be found in the territory for which such public library is maintained, as defined in its charter or in the permission granted by the regents; and further provided, that, on written request of the school authorities, any dictionaries, cyclopedias

and pedagogic books shall be placed in the school library of the district to which such books originally belong.

This section was Education Law of 1909, § 1049, which came from Consolidated School Law, L. 1894, ch. 556, tit. 13, § 6.

§ 1140. Provision for change to free public library. In any district in which the school library is a circulating library, within the provisions of section eleven hundred and thirty-five, the school authorities, in their discretion, may appoint five trustees who shall apply to the regents for a library charter and upon incorporation, the school authorities may transfer to the custody of said trustees for the purposes of a circulating library any of their library property as provided in section eleven hundred and thirty-eight.

Amended to read as above by L. 1914, ch. 51.

This section was derived from Education Law of 1909, § 1050, which came from Consolidated School Law, L. 1894, ch. 556, tit. 13, § 7.

Section 1140 of the Education Law of 1909 is now covered by section 1050.

§ 1141. Penalty for disobedience to library law, rules or orders. The commissioner of education is hereby authorized to withhold its share of public school moneys from any city or district which uses school library moneys for any other purpose than that for which they are provided, or for any wilful neglect or disobedience of the law or the rules or orders of said commissioner in the premises.

This section was Education Law of 1909, § 1051, which came from Consolidated School Law, L. 1894, ch. 556, tit. 13, § 8.

Section 1141 of the Education Law of 1909 is now covered by section 1051.

ARTICLE 45*

COURT LIBRARIES

Section 1160. Court of appeals libraries.
1161. Court of appeals judges' law libraries.
1162. Appellate division libraries.
1163. Appellate division library, first department.
1164. Appellate division library, fourth department.
1165. Supreme court libraries.
1166. Supreme court library at New York.
1167. Supreme court library in borough of Brooklyn.
1168. Supreme court library at Newburgh.
1169. Joseph F. Barnard memorial library at Poughkeepsie.
1170. Supreme court library at Kingston.
1171. Supreme court library at Saratoga.
1172. Supreme court library at Utica.
1173. Supreme court library at Binghamton.
1174. Supreme court library at Delhi.
1175. Supreme court library at Elmira.
1176. David L. Follett memorial library at Norwich.
1177. Supreme court library at Buffalo.
1178. Supreme court library at White Plains.
1179. Supreme court library at Troy.
1180. Supreme court library in Queens county.
1180. City court of the city of New York.
1180-b. Law library for the county officials of the county of Bronx.
1181. Watertown law library.
1182. Riverhead law library.

§ 1160. Court of appeals libraries. 1. The consultation library of the court of appeals is continued. Said library shall be under the exclusive supervision of that court and the chief judge may add thereto from any funds available.

2. The library of the court of appeals, located at the city of Syracuse, is continued. The regents of the university shall appoint a suitable person to be librarian of the said library, who

* This article was covered by article 44 of the Education Law of 1909, "Libraries." Article 45 of the Education Law of 1909 was "State School of Agriculture at Saint Lawrence University."

shall receive an annual salary of three thousand dollars, to be paid by the comptroller in monthly instalments, upon the certificate of a justice of the supreme court residing in the city of Syracuse, which said amount shall be levied and assessed by the comptroller, one-half upon the county of Onondaga, and the residue thereof upon the several remaining counties constituting the fifth judicial district, in proportion to the assessed valuation of the real and personal property in said counties. Said librarian shall appoint an assistant librarian and such other assistants as shall be determined by the board of supervisors of said county of Onondaga, who shall be paid by said county of Onondaga a salary or salaries to be fixed by said board of supervisors of said county. The said library shall be maintained as a free public library for the use of the people of the state, the supreme court of the fifth judicial district and the local courts of the county of Onondaga and city of Syracuse. Such library shall be kept in the court-house of Onondaga county and without expense to the state, except for the purchase of books, binding and repair of books. The regents of the university shall frame and establish suitable rules and regulations for the use of the books in such library, and shall add to and amend the same as shall be necessary.

Subdivision 1 of this section was Education Law of 1909, § 1052, subd. 1, which came from L. 1849, ch. 300. Subdivision 2 was Education Law of 1909, § 1052, subd. 2, which came from L. 1908, ch. 482. The last cited statute amended L. 1849, ch. 300, which was "an act concerning the library of the late court of chancery and the supreme court, and for locating and increasing the same."

Section 1160 of the Education Law of 1909 is now covered by section 1070.

§ 1161. Court of *appeals' judges law libraries. The law libraries of the judges of the court of appeals are continued. Each judge has sole custody and control of the library assigned to him and on expiration of his term of office shall deliver it to his successor. He may add to it from any funds available.

This section was Education Law of 1909, § 1053, which came from L. 1849, ch. 300.

Section 1161 of the Education Law of 1909 is now covered by section 1071.

§ 1162. Appellate division libraries. The libraries heretofore established for the appellate divisions of the supreme court are continued. They are under exclusive supervision of the respective

* So in original.

appellate divisions. The justices of the court shall be trustees thereof who shall continue to be vsted with all the powers with regard thereto now possessed by said justices.

This section was Education Law of 1909, § 1054, which came from L. 1865, ch. 722, § 1; L. 1896, ch. 434, § 1; L. 1897, ch. 185, § 1; L. 1900, ch. 490, § 3; L. 1907, ch. 496, § 4.

Section 1162 of the Education Law of 1909 is now covered by section 1072.

§ 1163. Appellate division library, first department. The law library of the appellate division of the first department shall be kept in the courthouse thereof, and shall be in the care and custody and under the control of the justices of the appellate division of said first department, who shall be the trustees thereof. The said trustees may make rules and regulations for the management and protection of said library and prescribe penalties for the violation thereof. They may sue for and recover such penalties and may maintain actions for injury to said library. They may appoint a librarian and an assistant librarian and fix their salaries, the former at not to exceed the sum of four thousand dollars per annum, and the latter at not to exceed three thousand dollars per annum. The said librarian shall, in addition to the duties now performed by him, perform such duties in relation to the custody and distribution of stationery and other supplies furnished for the use of the appellate division of said first department[1] as said justices of said appellate division shall direct. The said trustees may procure furniture for said library and shall defray all the expenses incidental to its care and management. They shall yearly ascertain the amount necessary for the aforesaid purposes and certify it to the board of estimate and apportionment, who shall provide for raising and paying the same.

Amended to read as above by L. 1911, ch. 832. The change made by the amendment is indicated in the footnote.

This section was derived from Education Law of 1909, § 1055, which came from L. 1865, ch. 722, § 1; L. 1882, ch. 410, § 1095; L. 1895, ch. 553, § 10, as amended by L. 1898, ch. 649, § 1; L. 1900, ch. 490, § 3, and L. 1907, ch. 496, § 4.

§ 1164. Appellate division library, fourth department. The law library of the appellate division of the fourth department shall be kept in the court-house of Monroe county and without expense to the state for heat, light, janitor service, furniture,

[1] Words "and of the supreme court in the first judicial department," omitted.

stationery supplies, binding and repair of books, which shall be provided by said county. This library shall be maintained as a free public library for the use of the people of the state, the appellate division of the supreme court in the fourth judicial department, the supreme court of the seventh judicial district and the local courts at Rochester. The consultation library heretofore provided for the appellate court shall be a part of this library but shall remain in the justices' chambers for their own personal use. The librarian of said library and an assistant librarian and their successors shall be appointed and may be removed at pleasure by the justices of the appellate division of the supreme court in the fourth judicial department. The librarian shall be paid an annual salary of three thousand dollars, to be paid in monthly instalments by the state comptroller which shall be levied and assessed by him upon the counties constituting the fourth judicial department, and the assistant librarian shall be paid by the county of Monroe, a salary to be fixed by the board of supervisors of said county. A certificate of the appointment of the librarian, signed by the presiding justice of the fourth judicial department, shall be filed with the comptroller of the state.

This section was Education Law, § 1056, which came from L. 1900, ch. 258, §§ 2, 3, 4, as amended by L. 1907, ch. 186, § 1.

§ 1165. Supreme court libraries. The following supreme court law libraries are continued:

1. In the first judicial district the library formed by the consolidation of the libraries of the superior court of the city of New York and the court of common pleas of said city and county.

2. In the second judicial district the libraries at the borough of Brooklyn and at Newburgh and the Joseph F. Barnard memorial law library at Poughkeepsie.

3. In the third judicial district the library at Kingston and the library at Troy.

4. In the fourth judicial district the library at Saratoga Springs.

5. In the fifth judicial district the library at Utica.

6. In the sixth judicial district the libraries at Binghamton, Delhi and Elmira, and the David L. Follett memorial library at Norwich.

7. In the eighth judicial district the library at Buffalo.

8. In the ninth judicial district the library at White Plains.

This section was Education Law of 1909, § 1057, which was a new enactment.

§ 1166. Supreme court library at New York. The law libraries of the superior court of the city of New York and of the court of common pleas of said city and county as consolidated, and the books therein, shall be the law library of the supreme court in the first judicial district and shall be in the care and custody and under the control of the justices of the supreme court in said judicial district, or a majority of them, not designated as justices of the appellate division, who shall be the trustees thereof. The said trustees may make rules and regulations for the management and protection of said library and prescribe penalties for the violation thereof. They may sue for and recover such penalties and may maintain actions for injury to said library. They may appoint a librarian and fix his salary at not to exceed the sum of four thousand dollars per annum. They may also appoint an assistant librarian and a telephone operator and fix their salaries. They may procure proper furniture for said library, purchase books therefor and defray all the expenses incidental to its care and management. They shall yearly ascertain the amount necessary for the aforesaid purposes and certify it to the board of estimate and apportionment, who shall provide for raising and paying the same.

Amended to read as above by L. 1911, ch. 832; L. 1913, ch. 512. This section was derived from Education Law of 1909, which came from L. 1898, ch. 649, § 1 pt., as amended by L. 1900, ch. 490, § 3, and L. 1907, ch. 496, § 4.

§ 1167. Supreme court library in borough of Brooklyn. The supreme court library in the borough of Brooklyn shall be under the care and management of the trustees of the law library of the borough of Brooklyn; subject, however, to such orders, rules and regulations, touching the same, as may be made, from time to time, by a majority of the justices of the supreme court, residing in said district. All appropriations made for said library, shall be paid to the said trustees, to be by them disbursed in the purchase of books for said library. The said trustees may make rules and regulations for the management and protection of said library, and prescribe penalties for the violation thereof; they may sue for and recover such penalties, and may maintain actions

for injuries to said library, and may procure proper furniture for said library, hire suitable rooms, employ a librarian, provide fuel and lights, and defray all the incidental expenses of the care and management of said library; they shall yearly ascertain the amount necessary for the aforesaid purposes, and certify it to the board of estimate and apportionment of the city of New York, who shall pay the same. They shall yearly make a report to the regents of the university, of the additions made to said library during the preceding year.

This section was Education Law of 1909, § 1059, which came from L. 1863, ch. 463, § 2.

§ 1168. Supreme court library at Newburgh. The second judicial district law library at Newburgh shall be in charge of and under the care of the trustees of the Orange county referee law library association, and shall be governed by such rules as said trustees with the approval of a justice of the supreme court of the second judicial district may prescribe. The board of supervisors of Orange county shall, subject to the approval of a justice of the supreme court of said district, provide suitable and proper rooms in which said library shall be placed and kept, and the annual rent of said rooms and the necessary expense of care for said library shall be a county charge payable by the treasurer of said county upon vouchers approved by a justice of the supreme court of said district.

The said trustees shall appoint a librarian for such library, who shall hold office during their pleasure. Such librarian shall receive an annual salary not to exceed six hundred dollars, which shall be paid to him quarterly by the treasurer of the county of Orange, out of money appropriated for the court expenses in said county.

It shall be the duty of said trustees to effect an insurance upon said library, the cost whereof shall be paid in like manner by the comptroller of the state of New York upon a certificate, from the appropriations that may be from time to time made for the maintenance of said library. Such insurance shall be made in the name of the people of the state of New York, and in case of loss the amount thereof shall be expended in the purchase of new books for said library, in the same manner that the original appropriations were used for that purpose.

This section was Education Law of 1909, § 1060, which came from L. 1893, ch. 63, §§ 1–4.

Proper use of funds appropriated for books, binding and supplies.— It has been held that money appropriated by the legislature for "books, binding and supplies" for Supreme Court libraries, cannot be used for insurance upon such libraries, and the audit and payment by the comptroller of an item for insurance would be improper and unauthorized under the provisions of such appropriation bill. Op. Atty.-Gen. (1915) 127.

§ 1169. Joseph F. Barnard memorial library at Poughkeepsie. The Joseph F. Barnard memorial library located in the Dutchess county court-house at Poughkeepsie shall be under the care and management of a board of trustees, which board shall consist of five members. The trustees now in office shall continue to serve for the terms for which they were appointed. At the expiration of such terms the governor shall appoint their successors, each of whom shall serve for five years and until his successor is appointed. Such appointment shall be made from among the members of the Dutchess county bar who shall have practiced law for at least ten years. Said board of trustees shall have power to receive by gift or bequest any property for the purpose of a law library and hold and manage the same, and may make rules and regulations for the management and protection of said library and prescribe penalties for the violation thereof. They may sue for and recover such penalties and may maintain actions for any injury to said library or property connected therewith. They may procure proper furniture for said library and defray all the expenses of the care and management of said library, including insurance, and the amounts required therefor shall be paid by the treasurer of the county of Dutchess upon the certificate of a justice of the supreme court of the second judicial district or of the county judge of Dutchess county, out of the moneys raised in said county for court and jury expenses, which sums as well as the salary of the librarian hereinafter specified shall be a county charge upon the county of Dutchess. All appropriations made for said library shall be paid by the treasurer of the state to said trustees to be by them or by a majority of them disbursed for the purchase of books for said library and for the necessary rebinding of the same.

The librarian of the Joseph F. Barnard memorial law library shall be appointed by said board and shall hold office at the pleasure of said board. The salary of said librarian shall be fixed by the board of supervisors of the county of Dutchess and shall be paid quarterly on the first days of January, April, July and October in each year by the treasurer of the county of Dutchess out

of the moneys raised in said county for court and jury expenses upon the certificate of the Dutchess county judge. Said librarian shall be subject to the direction of the said board and shall be governed by such rules as it shall from time to time establish.

This section was Education Law of 1909, § 1061, as amended by L. 1909, ch. 141. Before the amendment the salary of the librarian was fixed at $300. Section 1061 of the Education Law of 1909 came from L. 1904, ch. 254, §§ 1–3.

§ 1170. Supreme court library at Kingston. The justice of the supreme court residing in the city of Kingston is hereby authorized from time to time to appoint a librarian to take charge of the law library of the third judicial district, located at Kingston, who shall be paid a salary of six hundred dollars per year, the amount to be payable upon the certificate of said justice out of the moneys raised in the county of Ulster for court expenses by the treasurer thereof, upon the presentation of such certificate.

It shall also be the duty of said justice, so residing at Kingston, to effect an insurance upon said library, the cost whereof shall be paid in like manner by the comptroller of the state of New York upon a like certificate. Such insurance shall be made in the name of the people of the state of New York, and in case of loss the amount thereof shall be expended in the purchase of new books for said library, in the same manner that the original appropriations were used for that purpose.

This section was Education Law of 1909, § 1062, which came from L. 1876, ch. 318, §§ 1, 2.

§ 1171. Supreme court library at Saratoga. The justices of the supreme court of the fourth judicial district for the time being shall be ex officio trustees of the supreme court library at Saratoga, and the same shall be under the care and management of the said trustees; and it shall be the duty of the said justices, by a majority of their said number, from time to time to make orders, rules and regulations touching the care, management, protection and due preservation of the said library, and prescribe penalties for the violation thereof, and they may sue for and recover such penalties for violation thereof, and may maintain actions for injuries to said library. They may procure proper furniture for said library, hire suitable rooms, appoint a suitable librarian, provide fuel and lights, and defray all incidental expenses of the care and management of the said library.

All appropriations made for said library shall be paid to said trustees, to be by them disbursed in the purchase of books for said library. The said trustees shall report annually to the trustees of the state library the catalogue of books in the said library, and the state and condition thereof. The trustees of the state library are hereby authorized to place in said library any duplicates of books in their possession not needed in the state library.

This section was Education Law of 1909, § 1063, which came from L. 1866, ch. 882, §§ 2, 3.

§ 1172. Supreme court library at Utica. A justice of the supreme court residing in the city of Utica, if there be a resident justice in said city, and if not, a justice of the supreme court residing in the county of Oneida, is hereby authorized to appoint from year to year beginning September first, nineteen hundred and eight, a librarian to take charge of the law library in the fifth judicial district, located in the city of Utica, who shall be paid a salary to be fixed by said judge not exceeding one thousand dollars per year. The said judge may also appoint an assistant librarian if in his judgment such assistant is necessary, who shall hold office during the pleasure of said judge, and who shall be paid a salary fixed by him not exceeding six hundred dollars per year. Said salaries shall be payable on the certificate of the said justice of the supreme court residing in the city of Utica, if there be such justice, and if not, on the certificate of a justice of the supreme court residing in the fifth judicial district, out of the moneys raised in the county of Oneida for court expenses by the treasurer thereof, upon the presentation of such certificate.

This section was Education Law of 1909, § 1064, which came from L. 1877, ch. 91, § 1, as amended by L. 1887, ch. 14, § 1, and L. 1904, ch. 37, § 1.

§ 1173. Supreme court library at Binghamton. All books purchased for the supreme court library, located at Binghamton, under and in pursuance of the laws of the state relating thereto shall be purchased by the justice of the supreme court residing at that place, or if there be no justice there, then by the justice residing nearest to the city of Binghamton. The books so purchased shall be paid for on the order of such justice.

The librarian of such library shall be appointed by said justice, and shall hold office during his pleasure. The salary of said librarian shall be paid monthly in each year, and the amount thereof

shall be fixed in the month of October in each year for the following year by said justice, which shall be paid by the county of Broome, but shall not exceed six hundred dollars in any one year. Said librarian shall be subject in all respects to the direction of said justice, and shall be governed by such rules and regulations as he shall make from time to time.

The board of supervisors of Broome county shall provide a suitable room or rooms and suitable cases in the court-house at Binghamton for said supreme court library. The contingent expenses of said library, except for the purchase of books, shall be paid as heretofore by the county of Broome; which contingent expenses must be first certified to be correct by one of said justices or by the county judge of said county. Said court may have said library insured for the benefit of said library and the policies made payable to the clerk of the county of Broome and any insurance money received shall be invested and shall be paid out by said clerk under the orders of the justice of the supreme court charged with the purchase of books for said library, in restoring said library, in purchasing additional books therefor and in paying expenses necessarily incurred by reason of a fire in removing and caring for said library and in adjustment of the loss under the policies of insurance thereon.

The librarian of said library shall, upon the written request of any justice of the supreme court of such district, send to said justice any of the books contained in said library, and pay the charges for sending and returning the same. The sum so paid by him shall be repaid to him out of any moneys appropriated for the support or maintenance of said library, upon being duly certified by a majority of the justices of the supreme court of said district.

This section was Education Law of 1909, § 1065, which came from L. 1892, ch 394, § 4 pt.; L. 1893, ch. 58, §§ 1–4; L. 1859, ch. 230, § 9, as amended by L. 1897, ch. 482, § 1; L. 1883, ch. 270, § 1.

§ 1174. Supreme court library at Delhi. The justices of the supreme court of the sixth judicial district, or a majority of them, shall appoint a librarian for the supreme court library, located at Delhi, Delaware county, which librarian shall hold his office during the pleasure of said justices. Such appointment shall be in writing and signed by a majority of said justices and filed in the

office of the clerk of Delaware county. The salary of such librarian shall be five hundred dollars per annum, and shall be paid in quarterly payments of one hundred and twenty-five dollars each, on the last day of each of the months of March, June, September and December of each year, by the county treasurer of the county of Delaware, from the funds in his hands as such treasurer. Said librarian shall be subject to the directions of said justices, and shall be governed by such rules and regulations as they shall make from time to time.

This section was Education Law of 1909, § 1066, which came from L. 1882, ch. 51, §§ 1, 2, 4, and § 3, as amended by L. 1906, ch. 64, § 1.

§ 1175. Supreme court library at Elmira. The supreme court library at Elmira shall be under the care and management of a board of trustees which board shall consist of three members who shall be appointed by the governor from among the members of the Chemung county bar who shall have practiced law for at least ten years. At the expiration of the terms of the trustees now in office the governor shall appoint their successors, each of whom shall serve for three years and until his successor is appointed. All appropriations made for said library shall be paid to said trustees, to be by them or a majority of them disbursed in the purchase of books for said library. The said trustees may make rules and regulations for the management and protection of said library and prescribe penalties for the violation thereof. They may sue for and recover such penalties, and may maintain actions for injuries to said library. They may procure proper furniture for said library; hire suitable rooms; provide fuel and lights; and defray all the incidental expenses of the care and management of said library, including the insurance thereof. The amounts required therefor shall be paid by the treasurer of the county of Chemung, upon the certificate of the resident justice of the supreme court, if there be one, and if not, upon the certificate of any justice of the supreme court of the district, out of the moneys raised in said county for court expenses, which sums, as well as the salary of the librarian hereafter specified, shall be a county charge upon said county of Chemung.

The librarian of said library shall be appointed by said board, and shall hold office during the pleasure of said board. The salary of said librarian shall be paid quarterly on the first days of January, April, July and October in each year and the amount thereof

shall be fixed in the month of October in each year for the following year by said board, but such salary shall not exceed six hundred dollars in any year, and the same shall be paid by the treasurer of the county of Chemung out of the moneys raised in said county for court expenses, upon the certificate of the resident justice of the supreme court, if there be one, and if not, upon the certificate of any justice of the supreme court in the district. Said librarian shall be subject to the directions of said board and shall be governed by such rules as it shall from time to time make.

This section was Education Law of 1909, § 1067, which came from L. 1895, ch. 231, §§ 1, 2, and § 3 as amended by L. 1905, ch. 119, § 1.

§ 1176. David L. Follett memorial library at Norwich. The supreme court library at Norwich, known as "The David L. Follett Memorial Library" shall be under the care and management of a board of trustees which board shall consist of five members who shall be appointed by the governor from among the members of the Chenango county bar who shall have practiced law for at least ten years. At the expiration of the terms of the trustees now in office the governor shall appoint their successors, each of whom shall serve for five years and until his successor is appointed. The said board of trustees shall have power to receive by gift or devise, any property conveyed for the purpose of a law library and hold and manage the same and may make rules and regulations for the management and protection of said library and prescribe penalties for the violation thereof. They may sue for and recover such penalties and may maintain actions for any injury to said library or its property. They may procure proper furniture for said library; hire suitable rooms; provide fuel and lights, and defray all the incidental expenses of the care and management of said library, including the proper insurance thereof. The amounts required therefor shall be paid by the treasurer of the county of Chenango, upon the certificate of a resident justice of the supreme court, if there be one, and if not, upon the certificate of any justice of the supreme court of the sixth judicial district, out of the moneys raised in said county for court expenses, which sums as well as the salary of the librarian hereinafter specified, shall be a county charge upon said county of Chenango. All appropriations made for said library shall be paid by the treasurer of the state to said trustees, to be by them or by a majority of

them disbursed in the purchase of books for said library and for the necessary rebinding of the same.

The librarian of the said library shall be appointed by said board, and shall hold office during the pleasure of said board. The salary of said librarian shall be paid quarterly on the first days of January, April, July and October in each year and the amount thereof shall be fixed in the month of October in each year for the following year by said board, but such salary shall not exceed five hundred dollars in any year, and the same shall be paid by the treasurer of the county of Chenango out of the moneys raised in said county for court expenses upon the certificate of the resident justice of the supreme court, if there be one; and if not upon the certificate of any justice of the supreme court in said district. Said librarian shall be subject to the direction of the said board and shall be governed by such rules as it shall from time to time establish and ordain.

This section was Education Law of 1909, § 1068, which came from L. 1902, ch. 32.

§ 1177. Supreme court library at Buffalo. The supreme court library at Buffalo shall be under the care and management of the present trustees and their successors in office; who shall be known as the trustees of the law library of the eighth judicial district. In case of a vacancy in said board of trustees it shall be filled at a term of the appellate division of the supreme court of the fourth judicial department, by the judges thereof, who shall appoint to such vacancy either a justice of the supreme court residing in the eighth judicial district or an attorney and counselor at law residing in the eighth judicial district and of at least ten years' standing at the bar; provided, however, that at all times at least four of the trustees of said library shall be residents of the county of Erie. All appropriations made for said library shall be paid to the said trustees, to be by them disbursed in the purchase of books, and in the repair of books, for said library. The said trustees shall appoint a suitable person librarian of said library, who shall receive an annual salary of two thousand five hundred dollars, to be paid by the comptroller in monthly instalments, upon the certificate of the treasurer of the trustees of said library, which said amount shall be levied and assessed by the comptroller, one-half upon the county of Erie, and the residue thereof upon the several remaining

counties constituting the eighth judicial district, in proportion to the assessed valuation of the real and personal property in said counties. The said trustees may make rules and regulations for the management and protection of said library, and prescribe penalties for the violation thereof; and may sue for and recover such penalties, and may maintain actions for injuries to said library; they may procure proper furniture for said library, hire suitable rooms, employ assistants to said librarian, provide fuel and lights, and defray all the incidental expenses of the care and management of said library; they shall yearly ascertain the amount necessary for the aforesaid purposes and certify it to the board of supervisors of Erie county, who shall pay the same. They shall yearly make a report to the regents of the university of the state of said library. The said library shall be maintained as a free public library for the use of the people of the state, the supreme court of the eighth judicial district, and the local courts of the county of Erie and of the city of Buffalo.

Amended to read as above by L. 1911, ch. 58.
This section was Education Law of 1909, § 1069, which came from L. 1863, ch. 401, § 2, as amended by L. 1871, ch. 747, § 1, and L. 1893, ch. 706, § 1.

§ 1178. Supreme court library at White Plains. The supreme court library at White Plains shall be under the care and management of a board of trustees, which board shall consist of five members, who shall be appointed by the governor, from among the members of the Westchester county bar, who have practiced law for at least ten years. At the expiration of the terms of the members of said board of trustees now in office the governor shall appoint successors to said trustees, who shall serve for five years and until their successors have been appointed. The said board of trustees shall have power to receive by gift, devise or bequest any property given or conveyed for the purpose of a law library, and hold and manage the same, and may make rules and regulations for the management and protection of said library and prescribe penalties for the violation thereof. They may sue for and recover such penalties and may maintain actions for any injury to said library or its property. They may procure proper furniture for said library; hire suitable rooms, provide fuel and lights and defray all the incidental expenses of the care and management of said library including the proper insurance thereof. The amounts

required therefor shall be paid by the treasurer of the county of Westchester, upon the certificate of a resident justice of the supreme court, if there be one, and if not, upon the certificate of any justice of the supreme court of the ninth judicial district, out of the moneys raised in said county for court expenses, which sums, as well as the salary of the librarian hereinafter specified, shall be a county charge upon said county of Westchester. All appropriations made by the state for said library for purposes not hereinbefore otherwise provided for shall be paid by the treasurer of the state, upon the warrant of the comptroller, to said trustees to be by them, or a majority of them, disbursed in the purchase of books for said library and for maintenance and supplies. The librarian of said library, who shall be a regularly admitted attorney and counselor-at-law who has practiced law for at least five years, shall be appointed by said board of trustees and shall hold office during the pleasure of said board. The amount of the salary of said librarian shall be fixed by said board of trustees, and shall be paid in monthly instalments by the treasurer of the county of Westchester out of the moneys raised in said county for court expenses, upon the certificate of a resident justice of the supreme court, if there be one, and if not, upon the certificate of any justice of the supreme court of the ninth judicial district. Said librarian shall be subject to the direction of the said board of trustees and shall be governed by such rules as it shall from time to time establish and ordain.

This section came from L. 1908, ch. 304, §§ 2, 3.

§ 1179. Supreme court library at Troy. The supreme court library at Troy shall be under the care and management of a board of trustees, which board shall consist of three members, who shall be appointed by the governor from among the members of the Rensselaer county bar, who shall have practiced law in said county for at least ten years. At the expiration of the terms of the members of said board of trustees now in office the governor shall appoint successors to said trustees who shall serve for three years and until their successors have been appointed. The said board of trustees shall have power to receive, by gift or devise, any property conveyed for the purpose of a law library and hold and manage the same and may make rules and regulations for the management and protection of said library and prescribe penalties

for the violation thereof. They may sue for and recover such penalties and may maintain actions for any injury to said library or its property. They may procure proper furniture for said library; and defray all the incidental expenses of the care and management of said library, including insurance thereof and telephone service. The amounts required therefor shall be paid by the treasurer of the county of Rensselaer, upon the certificate of a resident justice of the supreme court, if there be one, and if not upon the certificate of any justice of the supreme court of the third judicial district, out of the moneys raised in said county for court expenses, which sums as well as the salary of the librarian hereinafter specified, shall be a county charge upon said county of Rensselaer. All appropriations made for said library shall be paid by the treasurer of the state to said trustees to be by them or by a majority of them disbursed in the purchase of books for said library and for the necessary rebinding of the same. The board of supervisors of Rensselaer county shall provide within the court house in the city of Troy, suitable rooms for said library, and shall provide heat and light therefor. The librarian of the supreme court library at Troy shall be appointed by said board, and shall hold office during the pleasure of said board. The salary of said librarian shall be paid quarterly on the first days of January, April, July and October in each year and the amount thereof shall be fixed in the month of October in each year for the following year by said board, and the same shall be paid by the treasurer of the county of Rensselaer out of the moneys raised in said county for court expenses upon the certificate of the resident justice of the supreme court, if there be one; and if not upon the certificate of any justice of the supreme court in said district. Said librarian shall be governed by such rules as it shall from time to time establish and ordain.

This section came from L. 1908, ch 79, §§ 2, 3.

§ 1180. Supreme court library in Queens county. There is hereby established a law library in the second judicial district, to be located in the county of Queens in the borough of Queens in the city of New York, which shall be designated as the supreme court library in the county of Queens. The said library shall be under the care and management of a board of trustees which shall consist of five members who shall be appointed by the resident supreme court justice or justices of the county of Queens

from among the members of the Queens county bar who have practiced law for at least ten years. If there shall be no resident supreme court justice in the county of Queens, then the appointment of the trustees shall be made by a majority of the justices of the appellate division of the supreme court for the second judicial department. Upon the passage of this act there shall be appointed in the manner above mentioned, one member of said board of trustees who shall serve until the thirty-first day of December, nineteen hundred and eleven; one member who shall serve until the thirty-first day of December, nineteen hundred and twelve; one member who shall serve until the thirty-first day of December, nineteen hundred and thirteen; one member who shall serve until the thirty-first day of December, nineteen hundred and fourteen; and one member who shall serve until the thirty-first day of December, nineteen hundred and fifteen. At the expiration of such terms there shall be appointed in the manner above mentioned, successors to said trustees, each of whom shall serve for five years and until his successor shall be appointed. The said board of trustees shall have power to receive by gift, devise or bequest any property given or conveyed for the purpose of a law library and hold and manage the same and may make rules and regulations for the management and protection of said library and prescribe penalties for the violation thereof. They may sue for and recover such penalties and may maintain actions for any injury to the said library or its property. They may procure proper furniture for said library; hire suitable rooms; provide fuel and lights and defray all incidental expenses of the care and management of said library, including the proper insurance thereof, and employ and appoint such persons as they may think necessary for the proper care, management and maintenance of said library, said appointees and employees to be selected from the appropriate civil service eligible list as required by law. They shall yearly ascertain the amount necessary for the aforesaid purposes and certify it to the board of estimate and apportionment of the city of New York, which shall include in the annual budget such sums as said board of estimate shall deem advisable, which sums shall be paid by the city of New York. All appropriations made by the state for the said library for purposes not otherwise herein provided for shall be paid by the treasurer of the state upon the warrant of the comptroller to the said trustees,

to be by them, or a majority of them, disbursed in the purchase of books for said library.

New. Added by L. 1911, ch. 557. Another section 1180, relating to the library of the city court of the city of New York, was added by L. 1911, ch. 824.

Section 1080 of the Education Law of 1909 is now covered by section 1090.

§ 1180. City court of the city of New York. The law library of the city court of the city of New York shall be kept in the court house thereof, and shall be in the care and custody and under the control of the justices of the said court, who shall be the trustees thereof. The said trustees may make rules and regulations for the management and direction of the said library and prescribe penalties for the violation thereof. They may sue for and recover said penalties and may maintain actions for injury to said library. They may appoint a librarian, whose salary shall be fixed by the board of estimate and apportionment of said city. The said librarian shall, in addition to the duties of taking care of the books of the library, also perform such duties in relation to the custody and distribution of the stationery and other supplies furnished for the use of the city court, and such other duties, as the justices direct. The said trustees may procure furniture for said library and shall defray all the expenses incidental to its care and management. They shall yearly ascertain the amount necessary for the aforesaid purposes and certify it to the board of estimate and apportionment of the city of New York, which shall include in the annual budget such sums as said board may deem advisable, which sums shall be paid by the city of New York.

New. Added by L. 1911, ch. 824. Another section 1180, establishing a Supreme Court library in the county of Queens, was added by L. 1911, ch. 557.

Section 1180 of the Education Law of 1909 is now covered by section 1090.

§ 1180-b. Law library for the county officials of the county of Bronx. The law library for the county officials of the county of Bronx shall be kept wherever designated by the trustees thereof and shall be in the care and custody and under the control of the surrogate, county judge and the district attorney, who shall be the trustees thereof. The said trustees may make rules and regulations for the management and direction of the said library and prescribe penalties for the violation thereof. They may sue for and recover said penalties and maintain actions for injury to said

library. They may appoint and at pleasure remove a librarian, whose salary shall be fixed by the board of estimate and apportionment of the city of New York and shall be a county charge. The said librarian shall, in addition to the duties of taking care of the books of the library, also perform such duties in relation to the custody and distribution of the stationery and other supplies furnished for the use of said library and such other duties as the trustees direct. The said trustees may procure furniture for said library and shall defray all expenses incidental to its care and management. They shall yearly ascertain the amount necessary for the aforesaid purposes and certify it to the board of estimate and apportionment of the city of New York, which shall include in the annual budget such sums as said board may deem advisable, which sums shall be paid by the city of New York, and shall be a county charge.

New. Added by L. 1914, ch. 385.

§ 1181. Watertown law library. The supreme court law library at Watertown, New York, in and for the fifth judicial district, shall be in charge of and under the care of the trustees of the Watertown law library and shall be governed by such rules as the trustees thereof may prescribe. The board of supervisors of Jefferson county shall provide suitable and proper rooms in which said library shall be kept. The county judge, with the consent of a majority of the said trustees, may appoint and at pleasure, with like consent, remove a librarian who shall also act as clerk to the county judge and whose salary shall be six hundred dollars per annum and payable[1] by the treasurer of said county out of the[2a] moneys appropriated for court expenses in said county. The said trustees may effect an insurance upon said library payable to the state of New York or any other parties in whom the title to any part of said books shall be vested. In case of loss insurance moneys may be expended by said trustees in the purchase of books to replace those destroyed. Insurance effected for the state of

[1] Words "The county judge, with the consent . . . six hundred dollars per annum and payable" substituted for sentence and words which read: "The trustees of said library shall appoint a librarian who shall hold office during their pleasure. The salary of said librarian shall be fixed by the board of supervisors of Jefferson county and paid."

[2a] Word "the" new.

New York shall be paid by the comptroller upon a certificate of said trustees from appropriations applicable thereto.

New. Added by L. 1914, ch. 343, and amended to read as above by L. 1915, ch. 108. The changes made by the amendment are indicated in the footnotes.
Section 1181 of the Education Law of 1909 is now covered by section 1091.

§ 1182. Riverhead law library. The supreme court law library at Riverhead, New York, in and for the second judicial district, shall be under the care and management of a board of three trustees who shall be members of the Suffolk county bar and who shall be selected by the justice of the supreme court residing in Suffolk county. Such trustees shall have power to receive by gift, devise or bequest any property given or conveyed for the purpose of a law library. The foundation of such law library shall be the law books and other library property now belonging to the Suffolk county bar association when the same shall be conveyed to such trustees by such bar association. It shall be the duty of such trustees to hold and manage the property of such library and to make rules and regulations for the management and protection of the same, and to prescribe penalties for the violation thereof. They may sue for and recover such penalties and maintain actions for any injury to such library or its property. They may procure proper furnishings, provide rooms, fuel and lights for such library and defray all incidental expenses for the care and management of same as well as the salary of a librarian. The amounts required therefor shall be paid by the treasurer of the county of Suffolk upon the certificate of a resident justice of the supreme court of the second judicial district, out of the moneys raised in such county for court expenses, which amounts shall be a county charge upon such county of Suffolk. The librarian shall be appointed by such board of trustees and shall hold office during their pleasure. Such trustees shall fix the salary of such librarian, which shall not exceed six hundred dollars per annum, and such salary shall be paid in equal monthly payments.

New. Added by L. 1916, ch. 231.
Section 1182 of the Education Law of 1909 is now covered by section 1092.

ARTICLE 45-A*

State School of Agriculture on Long Island

Section 1185. Establishment and control.
1186. Immediate supervision and management.
1187. Instruction and other operations.
1188. Establishment of an advisory board.

§ 1185. Establishment and control. There shall be established on Long Island an institution to be known as the New York State School of Agriculture on Long Island. The commissioner of education shall have the same general powers and duties in respect thereto as possessed by such commissioner concerning the schools and institutions mentioned in subdivisions two, three and four of section ninety-four of this chapter.

New. Added by L. 1912, ch. 319.

§ 1186. Immediate supervision and management. Such schools and the school property shall be under the immediate supervision, care and management of a board of nine trustees, of whom the governor shall appoint one from each of the five boroughs of the city of New York, two from the county of Nassau and two from the county of Suffolk. They shall be so appointed that the terms of office of three trustees shall expire each year. All trustees shall serve without pay. The board of trustees shall have the power to employ, and to fix the compensation of a director, teachers and such other persons as it may deem necessary for the welfare of the school, and on charges duly proven to the satisfaction of the said board of trustees, a director or teacher may be discharged and removed, provided it shall be so voted by two-thirds of the members of the board, and any such removal shall have the endorsement and approval of the state commissioner of education. The board of trustees shall have power to do all other things lawful and necessary to carry into effect the objects and purposes of this article; subject, however, to such advisory co-operation of the state commissioner of education, as may be deemed necessary. Students bona fide residents of the state shall

* This is a new article, being added by L. 1912, ch. 319.

have free tuition. All moneys received for the school, except moneys from the state treasury and donations, shall be reported and forwarded monthly to the state treasurer. Unless otherwise provided by statute moneys appropriated for maintenance, or any item of maintenance, of such school shall be paid out by the state treasurer on the warrant of the comptroller on the order of the board of trustees upon vouchers approved by such board and by the commissioner of agriculture.

New. Added by L. 1912, ch. 319, and amended to read as above by L. 1915, ch. 482.

§ 1187. Instruction and other operations. Such school shall furnish instruction and training in agricultural science, manual arts and domestic science; courses for public school teachers and others; winter courses for farmers and others, and such other operations as may be approved by the trustees and the commissioner of education. The provisions of section six hundred and seven of this chapter apply to such school.

New. Added by L. 1912, ch. 319.

§ 1188. Establishment of an advisory board. (Repealed.)

This section was added by L. 1912, ch. 319, and repealed by L. 1915, ch. 482.

ARTICLE 46

Divisions of History and Public Records

Section 1190. Divisions created.
1191. Functions of the division of history.
1192. Powers of regents in respect to public records and historical documents, et cetera.
1193. General duties of supervisor of public records.
1194. What are public records.
1195. Functions of the division of public records.
1196. Safeguarding of public records.
1197. Destruction of public records.
1198. Penalty.

Article 46 was added to Education Law of 1910 (ch. 140), by L. 1913, ch. 424. Laws 1911, ch. 380, an act relating to public records and historical documents, creating the office of supervisor of public records and transferring said office and the office of state historian to the education department, was repealed by L. 1913, ch. 424. The last named statute also amended the Education Law of 1909, as the same was amended by the Education Law of 1910 (ch. 140), by inserting therein a new article to be known as article 46, "Divisions of History and Public Records." Laws 1913, ch. 424, § 2, enacted that, "article 46 of such chapter 21 of the Laws of 1909, entitled, 'an act relating to education, constituting chapter 16 of the consolidated laws' is hereby renumbered article 47 and sections 1190, 1191 and 1192 thereof are renumbered respectively 1200, 1201 and 1202." Article 46 of the Education Law of 1909 related to, "State School of Agriculture at Alfred University," and contained sections 1160, 1161, 1162. In the Education Law of 1910 (ch. 140), the subject of the state school of agriculture at Alfred University was covered by article 42 which contained sections 1070 1071, 1072. Article 46 of the Education Law of 1910 (ch. 140), was, "Laws Repealed; Saving Clause; When to Take Effect," and contained sections 1190, 1191, 1192. Laws 1913, ch. 676, "an act to amend the education law, in relation to establishing a state veterinary college at New York University in the city of New York," enacted, that "article 46 of chapter 21 of the laws of 1909 . . . as amended by chapter 140 of the Laws of 1910, is hereby renumbered article 47, and sections 1190, 1191 and 1192 are renumbered *200, 201* and *202* thereof and a new article is hereby inserted, to be article 46 . . . ." The italicised sections are probable errors, sections 1200, 1201 and 1202 being intended. As the Education Law now reads there are two articles 46 and sections 1190–1193 are duplicated.

§ 1190. Divisions created. The division of public records and the division of history in the education department, and the offices of supervisor of public records and state historian, as created and continued by chapter three hundred and eighty of the laws of nineteen hundred and eleven, are hereby continued as so constituted, with the powers and duties herein prescribed. Such

divisions and officers and the employees thereof shall be subject to the same provisions of law and rules as the other divisions and employees of the education department.

New. Added by L. 1913, ch. 424. Former section 1190, was renumbered 1200 by the same chapter. A different section 1190 was added by L. 1913, ch. 676, and is set out infra, p. 421.

Sale of official publications.— The state historian is subject to the same provisions of law and rules as the other divisions of the Education Department. He consequently has no authority to sell the publications prepared and issued by him in his official capacity. Op. Atty.-Gen. (1911) 584.

§ 1191. Functions of the division of history. It shall be the function of the division of history, subject to the regulations of the regents, to collect, collate, compile, edit and prepare for publication all official records, memoranda, statistics and data relative to the history of the colony and state of New York.

It shall also be the function of the division of history in collaboration with the division of public records, when authorized by the commissioner of education so to do, to collate, compile, edit and prepare for publication as above, the official records, archives or papers of any of the civil subdivisions of the state.

And it shall further be the function of the division of history to collate, compile, edit and prepare for publication as above such archives, records, letters and manuscripts, belonging to the state or any of its officers or departments, or to any historical or patriotic society or association chartered by the regents or by statute law, or any other archives, records, papers and manuscripts, as in the judgment of the state historian but by authority of the commissioner of education, it shall be deemed for the best interests of the state to publish, for the preservation of the state's history.

New. Added by L. 1913, ch. 424.

Former section 1191 was renumbered 1201 by the same chapter. A different section 1191 was added by L. 1913, ch. 676, and is set out infra, p. 421.

§ 1192. Powers of regents in respect to public records and historical documents, et cetera. The education department, pursuant to the education law, shall, on and after October first, nineteen hundred and eleven, have general and exclusive supervision, care, custody and control of all public records, books, pamphlets, documents, manuscripts, archives, maps and papers of any public office, body, board, institution or society now extinct, or hereafter becoming extinct, the supervision, care, custody and control

of which are not already or shall not hereafter be otherwise provided for by law.

Such department shall take such action as may be necessary to put the records hereinabove specified, except as aforesaid, in the custody and condition contemplated by the various laws relating thereto and shall provide for their restoration and preservation, and cause copies thereof to be made whenever by reason of age, use, exposure or any casualty, such copies shall in their judgment be necessary. Whenever such copy is made, and after it has been compared with the original, it shall be certified by the official person, board or officer having the legal custody and control of said original, and shall thereafter be considered and accepted as evidence and, for all other purposes, the same as the original could be; provided that the original shall be thereafter cared for and preserved, the same as if no such copy had been made, for such examination as may be directed by an order of court in any action or proceeding in which the accuracy of the copy is questioned.

The officers of any county, city, town or village or other political division of the state or of any institution or society created under any law of the state may transfer to the regents records, books, pamphlets, manuscripts, archives, maps, papers and other documents which are not in general use, and it shall be the duty of the regents to receive the same and to provide for their custody and preservation.

New. Added by L. 1913, ch. 424.
Former section 1192 was renumbered 1202 by the same chapter. A different section 1192 was added by L. 1913, ch. 676, and is set out infra, p. 422.

§ 1193. General duties of supervisor of public records. The supervisor of public records shall examine into the condition of the records, books, pamphlets, documents, manuscripts, archives, maps and papers kept, filed or recorded, or hereafter to be kept, filed or recorded in the several public offices of the counties, cities, towns, villages or other political divisions of the state, and all other public records, books, pamphlets, documents, manuscripts, archives, maps and papers heretofore or hereafter required by law to be kept by any public body, board, institution or society, created under any law of the state in said counties, cities, towns, villages or other political divisions of the state, except where the same

conflicts with the present duties and office of the commissioner of records in the county of Kings and the commissioner of records in the county of New York.

New. Added by L. 1913, ch. 424.

A different section 1193 was added by L. 1913, ch. 676, and is set out infra, p. 422.

Supervision of public records in Bronx county.— The division of public records should exercise the same supervision in the newly created county of Bronx under sections 1190 to 1198 of this chapter as it exercises in other counties, with the exceptions of New York and Kings. Op. Atty.-Gen. (1914) 136.

§ 1194. What are public records. In construing the provisions of this chapter and other statutes, the words "public records" shall, unless a contrary intention clearly appears, mean any written or printed book or paper, or map, which is the property of the state, or of any county, city, town or village or part thereof, and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the state or of a county, city, town or village has received or is required to receive for filing.

All public records inscribed by public officials, other than maps, shall be entered or recorded in durable ink on linen paper durably made and well finished.

New. Added by L. 1913, ch. 424.

§ 1195. Functions of the division of public records. It shall be the duty of the division of public records to take all necessary measures for the proper inscription, the retrieval, the care and the preservation of all public records in the various political divisions of the state, except as described in section eleven hundred and ninety-three.

The division of public records shall advise with and recommend to public officers hereinbefore described, as to the methods of inscribing, as to the materials used in, and as to the safety and preservation of all public records. The recommendations of the division of public records may be enforced by an order issued by a justice of the supreme court upon application of the commissioner of education, either with or without notice to the proper public officer, as such justice may require.

New. Added by L. 1913, ch. 424.

§ 1196. Safeguarding of public records. Every person who has the custody of any public record books of a county, city, town or village shall, at its expense, cause them to be properly and substantially bound. He shall have any such books which may have been left incomplete, made up and completed from the files and usual memoranda, so far as practicable.

Officers or boards in charge of the affairs of counties, cities, towns and villages shall provide and maintain fireproof rooms, vaults, safes or other fire-resisting receptacles made of noncombustible materials, of ample size for the safe-keeping of the public records in their care, and shall furnish such rooms only with fittings of noncombustible material, the cost to be a charge against such county, city, town or village. All such records shall be kept in the buildings in which they are ordinarily used, and so arranged that they can be conveniently examined and referred to. When not in use, they shall be kept in the vaults, safes or other fire-resisting receptacles provided for them.

New. Added by L. 1913, ch. 424.

§ 1197. Destruction of public records. No officer of the state or of any county, city, town or village or other political division of the state, or of any institution or society created under any law of the state, shall destroy, sell or otherwise dispose of any public record, original or copied, or of any archives, in his care or custody or under his control, and which are no longer in current use, without first having advised the commissioner of education of their nature and obtained his consent.

New. Added by L. 1913, ch. 424.

§ 1198. Penalty. A public officer who refuses or neglects to perform any duty required of him by this chapter or to comply with a recommendation of the commissioner of education under the authority of this act, shall for each month of such neglect or refusal, be punished by a fine of not less than twenty dollars.

New. Added by L. 1913, ch. 424.
Neglect of duty by public officer: see PENAL LAW, § 1841.

ARTICLE 46*

The New York-American Veterinary College

Section 1190. The New York-American Veterinary College; to be a state veterinary college.
1191. Objects.
1192. Extent to which property may be held.
1193. Appropriations; report; scholarship; tuition fee.

§ 1190. The New York-American Veterinary College; to be a state veterinary college. The New York-American Veterinary College, one of the schools of departments of the New York University of the city of New York, is hereby adopted as the state veterinary college for the eastern portion of the state, so long as the work of the said veterinary college shall continue to be carried on either at its present location in West Fifty-fourth street in the city of New York, or elsewhere in the city of New York.

New. Added by L. 1913, ch. 676.
Former section 1190 was renumbered 200 by the same chapter but 1200 was probably intended. A different section 1190 was added by L. 1913, ch. 424, and is set out supra, p. 416.

§ 1191. Objects. The objects of the said veterinary college shall hereafter embrace the conducting of investigation as to the nature, prevention and cure of all diseases of animals, including such as are communicable to man and such as cause epizootics among live stock; to investigate the economical questions which will contribute to the more profitable breeding, rearing and utilization of animals; to produce reliable standard preparations of toxins, antitoxins and other products to be used in the diagnosis, prevention and cure of diseases and in the conducting of sanitary work by approved modern methods; and to give instruction in the normal structure and function of the animal body, in the pathology, prevention and treatment of animal diseases, and in all matters pertaining to sanitary science as applied to live stock, and correlatively to the human family.

New. Added by L. 1913, ch. 676.
Former section 1191 was renumbered 201 by the same chapter but 1201 was probably intended. A different section 1191 was added by L. 1913, ch. 424, and is set out supra, p. 417.

* This is a new article being added by L. 1913, ch. 676. Former article 46 was renumbered 47 by the same chapter. A different article 46 was added by L. 1913, ch. 424. See note to article 46, supra.

§ 1192. Extent to which property may be held. All buildings, furniture, apparatus and other property heretofore or hereafter erected or furnished by the state for such veterinary college shall be and remain the property of the state. New York University shall have the custody and control of said property, and shall with whatever state moneys may be received for the purpose, administer the said veterinary college, with authority to appoint investigators, teachers and other officers, to lay out lines of investigation, to prescribe the requirements for admission and the course of study, and with such other power and authority as may be necessary and proper for the due administration of such veterinary college. Said university shall receive no income, profit or compensation therefor, but all moneys received from state appropriations for the said veterinary college or derived from other sources in the course of the administration thereof shall be kept by said university in a separate fund from the moneys of the university, and shall be used exclusively for said New York-American Veterinary College.

Added by L. 1913, ch. 676.

Former section 1192 was renumbered 202 by the same chapter but 1202 was probably intended. A different section 1192 was added by L. 1913, ch. 424, and is set out supra, p. 417.

§ 1193. Appropriations; report; scholarships; tuition fee. The moneys that may be appropriated to be paid to the New York University by the state in any year to be expended by the said university in the administration of said veterinary college shall be payable to the treasurer of the New York University in three equal payments, to be made on the first day of October, the first day of January and the first day of April in such year; and within thirty days after the expiration of the period for which each installment is received the said university shall furnish the comptroller of the state of New York satisfactory vouchers for the expenditure of such installment. The said university shall expend such moneys and use such property of the state in administering said veterinary college, and shall report to the governor during the month of January in each year a detailed statement of such expenditures and of the general operations of the said veterinary college. Tuition shall be given free in this school to one student from each assembly district of the portion of this state lying east of the line drawn from Port Jervis to Utica and

thence to Ogdensburg. This free tuition scholarship for each assembly district to be awarded from time to time by the faculty of the school upon competitive examination. The tuition fees charged to other students and all other fees and charges in said veterinary college shall be fixed by the New York University, and the moneys so received shall be expended for the current expenses of the said veterinary college.

New. Added by L. 1913, ch. 676.

A different section 1193 was added by L. 1913, ch. 424 and is set out supra, p. 418.

ARTICLE 47*

LAWS REPEALED; SAVING CLAUSE; WHEN TO TAKE EFFECT

Section 1200. Laws repealed.
1201. Saving clause.
1202. When to take effect.

§ 1200. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

This section was renumbered 1200 by L. 1913, ch. 424. It appeared in the Education Law of 1909 as section 2000, and in the Education Law of 1910 (ch. 140) as section 1190.

§ 1201. Saving clause. Nothing herein contained shall be construed to impair or in any manner affect or change any special law touching the schools or school system of any city or incorporated village unless the same is so stated.

This section was renumbered 1201 by L. 1913, ch. 424. This section was Education Law of 1909, § 2001, and section 1191 of the Education Law of 1910 (ch. 140).

§ 1202. When to take effect. This chapter shall take effect immediately.

This section was renumbered 1202 by L. 1913, ch. 424. This section was Education Law of 1909, section 2002, and section 1192 of the Education Law of 1910 (ch. 140).

SCHEDULE OF LAWS REPEALED

Revised Statutes....	Part 1, chapter 9, title 8	All
Revised Statutes....	Part 1, chapter 15, title 1	All
Revised Statutes....	Part 1, chapter 15, title 2	All
Revised Statutes....	Part 1, chapter 15, title 3	All
Revised Statutes....	Part 1, chapter 15, title 4	All
Revised Statutes....	Part 1, chapter 15, title 5	All

* This article was formerly numbered 46. It was renumbered 47 by L. 1913, ch. 424, and the sections which were previously numbered 1190, 1191, 1192 were renumbered 1200, 1201, 1202. It was also renumbered article 47, by L. 1913, ch. 676, but the sections were renumbered 200, 201, 202. A probable error, 1200, 1201, 1202, being intended.

L. 1910, ch. 140 Schedule of Repeals

Laws of	Chapter	Section
1784	51	All (7th Sess.)
1784	15	All (8th Sess.)
1787	82	All
1791	45	All
1795	75	All
1796	49	All
1797	34	All
1798	48	All
1801	189	3
1801	195	28
1802	30	All
1807	135	All
1808	218	All
1809	156	4
1810	85	10
1811	246	53, 54
1812	131	All
1812	242	All
1813	52	All
1813	100	All
R. L. 1813	59	All
R. L. 1813	82	17
1814	27	All
1814	192	All
1815	207	All
1815	252	All
1816	202	All
1817	89	All
1818	276	All
1819	161	All
1819	164	All
1819	239	All
1820	224	All
1821	48	All
1821	61	All
1821	73	All
1821	240	2
1822	234	All
1822	256	All

Laws of	Chapter	Section
1823.....	189.....	All
1823.....	193.....	All
1823.....	269.....	27
1824.....	131.....	All
1824.....	239.....	22
1824.....	276.....	9
1825.....	166.....	1–3, 5
1825.....	203.....	All
1826.....	30.....	All
1827.....	97.....	2–4
1827.....	293.....	All
1828.....	21.....	1, ¶¶ 227, 267, 282, 411, 418, 442, 500, 524 (2d meet.)
1829.....	287.....	2–9
1829.....	376.....	5
1830.....	170.....	All
1830.....	219.....	All
1830.....	240.....	16, pt. affecting R. S., Pt. 1, Ch. 15, Tit. 2, Art. 1, § 3
1830.....	284.....	2
1830.....	320.....	5–7
1831.....	44.....	All
1831.....	142.....	All
1831.....	206.....	All
1832.....	223.....	All
1832.....	299.....	All
1832.....	317.....	All
1833.....	19.....	All
1833.....	109.....	All
1834.....	140.....	All
1834.....	241.....	All
1835.....	34.....	All
1835.....	80.....	All
1835.....	123.....	All
1835.....	138.....	1
1835.....	308.....	All
1836.....	142.....	All
1836.....	226.....	1–3
1836.....	228.....	2–4

Laws of	Chapter	Section
1836.....	399.....	4
1836.....	511.....	3
1837.....	200.....	All
1837.....	241.....	All
1837.....	298.....	All
1838.....	244.....	All
1839.....	177.....	All
1839.....	200.....	All
1839.....	226.....	All
1839.....	315.....	1, 2
1839.....	330.....	All
1840.....	174.....	2
1840.....	366.....	All
1840.....	381.....	All
1841.....	163.....	All
1841.....	260.....	All
1842.....	142.....	All
1842.....	150.....	4
1842.....	273.....	All
1843.....	85.....	All
1843.....	133.....	All
1844.....	234.....	All
1844.....	254.....	All
1844.....	255.....	All
1844.....	261.....	All
1844.....	311.....	All
1844.....	320.....	50, pt. repealing L. 1842, Ch. 150
1845.....	14.....	2
1845.....	85.....	All
1845.....	179.....	All
1846.....	45.....	All
1846.....	66.....	All
1846.....	132.....	All
1846.....	186.....	All
1846.....	323.....	All
1847.....	50.....	All
1847.....	172.....	All
1847.....	190.....	All

Laws of	Chapter	Section
1847.....	208.....	3
1847.....	211.....	All
1847.....	212.....	All
1847.....	273.....	All
1847.....	358.....	All
1847.....	361.....	All
1847.....	388.....	All
1847.....	443.....	All
1847.....	480.....	All
1847.....	485.....	All
1848.....	262.....	2–4
1848.....	318.....	All
1849.....	140.....	All
1849.....	175.....	All
1849.....	266.....	All
1849.....	300.....	All
1849.....	382.....	1–12, 14–16
1849.....	388.....	All
1849.....	404.....	All
1850.....	7.....	All
1850.....	51.....	1
1850.....	89.....	All
1850.....	184.....	All
1850.....	261.....	All
1850.....	360.....	All
1850.....	378.....	All
1851.....	151.....	All
1851.....	425.....	All
1851.....	449.....	All
1851.....	500.....	All
1851.....	544.....	All
1852.....	97.....	All
1852.....	333.....	2–4
1852.....	366.....	All
1853.....	78.....	All
1853.....	115.....	All
1853.....	184.....	All
1853.....	185.....	All
1853.....	402.....	All

Laws of	Chapter	Section
1853.....	433.....	All
1853.....	491.....	All
1854.....	80.....	All
1854.....	97.....	All
1854.....	167.....	All
1854.....	228.....	All
1854.....	272.....	1–3
1855.....	18.....	All
1855.....	50.....	All
1855.....	91.....	All
1855.....	178.....	All
1855.....	410.....	All
1855.....	471.....	1–3
1855.....	539.....	1 pt. relating to indigent blind
1856.....	51.....	All
1856.....	71.....	All
1856.....	168.....	All
1856.....	179.....	All
1856.....	180.....	All
1856.....	186.....	All
1857.....	51.....	3, 4
1857.....	527.....	All
1858.....	151.....	All
1858.....	290.....	All
1859.....	230.....	All
1859.....	278.....	All
1859.....	395.....	All
1859.....	426.....	All
1860.....	314.....	All
1860.....	402.....	All
1860.....	456.....	All
1862.....	351.....	All
1862.....	384.....	All
1862.....	450.....	All
1863.....	325.....	All
1863.....	378.....	All
1863.....	401.....	All
1863.....	418.....	All
1863.....	463.....	All

Laws of	Chapter	Section
1864.....	386.....	All
1864.....	555.....	All
1864.....	556.....	All
1864.....	583.....	All
1865.....	445.....	All
1865.....	585.....	All
1865.....	587.....	All
1865.....	647.....	All
1865.....	722.....	All
1866.....	78.....	All
1866.....	466.....	All
1866.....	520.....	All
1866.....	708.....	All
1866.....	800.....	All
1866.....	882.....	All
1867.....	84.....	All
1867.....	406.....	All
1867.....	583.....	All
1867.....	725.....	All
1867.....	744.....	All
1867.....	763.....	All
1867.....	819.....	All
1869.....	18.....	All
1870.....	60.....	All
1870.....	166.....	All
1870.....	180.....	All
1870.....	492.....	2, commencing "The local boards" and ending "the respective schools"
1870.....	557.....	All
1870.....	565.....	All
1871.....	166.....	All
1871.....	329.....	All
1871.....	359.....	All
1871.....	548.....	All
1871.....	711.....	All
1871.....	746.....	All
1871.....	747.....	All
1872.....	392.....	All

Laws of	Chapter	Section
1872.....	616.....	All
1872.....	654.....	All
1872.....	670.....	All
1873.....	463.....	All
1873.....	642.....	4–11
1874.....	45.....	All
1874.....	253.....	All
1874.....	421.....	All
1874.....	514.....	All
1875.....	176.....	All
1875.....	213.....	All
1875.....	322.....	All
1875.....	372.....	All
1875.....	567.....	All
1876.....	50.....	All
1876.....	132.....	All
1876.....	318.....	All
1876.....	372.....	All
1876.....	374.....	All
1877.....	33.....	All
1877.....	94.....	All
1877.....	161.....	All
1877.....	163.....	All
1877.....	219.....	All
1877.....	413.....	All
1877.....	425.....	1–6
1878.....	173.....	All
1878.....	174.....	All
1878.....	248.....	All
1879.....	134.....	All
1879.....	264.....	All
1879.....	289.....	All
1879.....	396.....	All
1879.....	405.....	All
1880.....	9.....	All
1880.....	27.....	All
1880.....	210.....	All
1880.....	348.....	All
1880.....	355.....	All

Laws of	Chapter	Section
1880.....	400.....	3
1880.....	455.....	All
1880.....	514.....	All
1880.....	527.....	All
1880.....	549.....	1, so far as amendatory of L. 1879, Ch. 272
1881.....	120.....	All
1881.....	223.....	All
1881.....	281.....	All
1881.....	377.....	All
1881.....	492.....	All
1881.....	528.....	All
1881.....	632.....	All
1881.....	675.....	All
1882.....	51.....	All
1882.....	115.....	All
1882.....	116.....	All
1882.....	147.....	All
1882.....	318.....	All
1882.....	319.....	All
1882.....	333.....	All
1882.....	381.....	All
1883.....	75.....	All
1883.....	172.....	All
1883.....	250.....	All
1883.....	270.....	All
1883.....	275.....	All
1883.....	294.....	All
1883.....	328.....	All
1883.....	355.....	2–4
1883.....	413.....	All
1883.....	414.....	All
1883.....	423.....	All
1884.....	30.....	All
1884.....	49.....	All
1884.....	89.....	All
1884.....	179.....	All
1884.....	248.....	All
1884.....	413.....	All

L. 1910, ch. 140 Schedule of Repeals

Laws of	Chapter	Section
1884.....	427.....	All
1885.....	58.....	All
1885.....	146.....	1
1885.....	340.....	1–11
1885.....	533.....	All
1886.....	121.....	All
1886.....	199.....	All
1886.....	292.....	All
1886.....	413.....	1, beginning "and it shall be the duty of" and ending "of the state"
1886.....	428.....	All
1886.....	493.....	All
1886.....	591.....	All
1886.....	595.....	All
1886.....	614.....	All
1886.....	615.....	All
1886.....	655.....	All
1887.....	14.....	All
1887.....	291.....	All
1887.....	318.....	All
1887.....	333.....	All
1887.....	334.....	All
1887.....	335.....	All
1887.....	538.....	All
1887.....	540.....	All
1887.....	592.....	All
1887.....	602.....	All
1887.....	652.....	All
1887.....	672.....	All
1887.....	675.....	All
1887.....	709.....	All
1888.....	27.....	All
1888.....	196.....	All
1888.....	209.....	All
1888.....	331.....	All
1888.....	334.....	All
1888.....	337.....	All
1888.....	444.....	All

Laws of	Chapter	Section
1888.....	533.....	All
1889.....	25.....	All
1889.....	77.....	1
1889.....	90.....	All
1889.....	137.....	All
1889.....	139.....	All
1889.....	142.....	All
1889.....	245.....	All
1889.....	328.....	All
1889.....	333.....	All
1889.....	517.....	All
1889.....	529.....	All
1890.....	73.....	All
1890.....	74.....	All
1890.....	170.....	All
1890.....	175.....	All
1890.....	197.....	All
1890.....	352.....	All
1890.....	431.....	All
1890.....	469.....	All
1890.....	524.....	All
1890.....	526.....	All
1890.....	534.....	All
1890.....	548.....	All
1891.....	303.....	All
1891.....	329.....	All
1891.....	377.....	All
1892.....	36.....	All
1892.....	152.....	All
1892.....	214.....	All
1892.....	280.....	All
1892.....	352.....	All
1892.....	378.....	All
1892.....	573.....	All
1893.....	6.....	All
1893.....	58.....	All
1893.....	63.....	All
1893.....	484.....	All
1893.....	485.....	All

L. 1910, ch. 140 Schedule of Repeals

Laws of	Chapter	Section
1893.....	488.....	All
1893.....	500.....	All
1893.....	636.....	All
1893.....	706.....	All
1894.....	127.....	All
1894.....	229.....	All
1894.....	443.....	All
1894.....	488.....	All
1894.....	556.....	All
1894.....	671.....	All
1895.....	87.....	All
1895.....	222.....	All
1895.....	223.....	All
1895.....	231.....	All
1895.....	232.....	All
1895.....	273.....	All
1895.....	274.....	All
1895.....	337.....	All
1895.....	341.....	2
1895.....	362.....	1, 2
1895.....	546.....	All
1895.....	550.....	All
1895.....	553.....	10
1895.....	563.....	All
1895.....	577.....	All
1895.....	630.....	All
1895.....	767.....	All
1895.....	768.....	All
1895.....	769.....	All
1895.....	853.....	All
1895.....	859.....	All, except pt. amending L. 1892, Ch. 378, § 19, last two sentences
1895.....	988.....	All
1895.....	1031.....	All
1895.....	1041.....	All
1896.....	71.....	All
1896.....	156.....	All
1896.....	165.....	All

Laws of	Chapter	Section
1896.....	177.....	All
1896.....	196.....	All
1896.....	238.....	All
1896.....	264.....	All
1896.....	434.....	All
1896.....	467.....	All
1896.....	493.....	All
1896.....	575.....	All
1896.....	586.....	All
1896.....	606.....	All
1896.....	646.....	All
1896.....	901.....	All
1897.....	97.....	All
1897.....	185.....	All
1897.....	195.....	All
1897.....	224.....	All
1897.....	293.....	All
1897.....	294.....	All
1897.....	466.....	All
1897.....	482.....	All
1897.....	495.....	All
1897.....	512.....	All
1897.....	689.....	All
1898.....	122.....	All
1898.....	223.....	All
1898.....	481.....	All
1898.....	649.....	All
1899.....	440.....	All
1899.....	489.....	All
1899.....	540.....	All
1900.....	22.....	All
1900.....	258.....	All
1900.....	301.....	All
1900.....	481.....	All
1900.....	490.....	3
1900.....	492.....	All
1901.....	85.....	1
1901.....	201.....	All
1901.....	343.....	All
1901.....	480.....	All

Laws of	Chapter	Section
1901.....	492.....	All
1901.....	498.....	All
1901.....	592.....	All
1901.....	644.....	1, part beginning "All persons" and ending "proper regulations"
1902.....	16.....	All
1902.....	32.....	All
1902.....	185.....	All
1902.....	316.....	All
1902.....	325.....	All
1902.....	393.....	All
1903.....	62.....	All
1903.....	112.....	All
1903.....	125.....	All
1903.....	175.....	All
1903.....	223.....	All
1903.....	233.....	All
1903.....	265.....	All
1903.....	289.....	All
1903.....	459.....	All
1903.....	463.....	All
1903.....	489.....	All
1903.....	576.....	All
1904.....	37.....	All
1904.....	40.....	All
1904.....	166.....	All
1904.....	254.....	All
1904.....	281.....	All
1904.....	305.....	All
1904.....	322.....	All
1904.....	390.....	All
1904.....	424.....	All
1904.....	427.....	All
1904.....	677.....	All
1905.....	97.....	All
1905.....	119.....	All
1905.....	154.....	All
1905.....	161.....	All
1905.....	252.....	All

Laws of	Chapter	Section
1905	258	All
1905	280	All
1905	311	All
1905	562	All
1905	563	All
1906	1	All
1906	58	All
1906	64	All
1906	150	All
1906	200	All
1906	218	All
1906	682	3, 4
1906	698	All
1907	103	All
1907	184	All
1907	186	All
1907	496	4
1907	585	All
1907	606	All
1907	608	All
1907	609	All
1908	79	All
1908	200	3
1908	201	2–4, 7
1908	202	All
1908	249	All
1908	263	1–5; 6, first sentence; 7
1908	304	All
1908	365	All
1908	476	All
1908	482	All
1908	499	All
1909	1	All
1909	141	All
1909	252	All
1909	263	All
1909	404	All
1909	406	All
1909	409	All
1909	415	All

NOTES TO SCHEDULE OF REPEALS

Prepared by the Board of Statutory Consolidation and printed in their report of 1907, at page 1173 et seq.

R. S., Pt. 1, Ch. 15, Tit. 2. Parts of said title not heretofore amended "to read as follows," as indicated in schedule, have been superseded or abrogated as follows:

Section 1 partly abrogated by L. 1854, Ch. 97, and balance superseded by L. 1864, Ch. 555, Tit. 1, §§ 8, 14.

Section 2 superseded by L. 1864, Ch. 555, Tit. 1, § 5.

Sections 5–15, 19 by same, Tit. 5, §§ 1–14.

Sections 116–158, 160–165 (Article 7), "Local regulations respecting common schools," direct the method of apportionment and distribution of school moneys in cities of New York, Troy, Hudson, Albany and Schenectady, the then villages of Poughkeepsie and Utica and the towns of Flatbush, Montgomery and Flushing; also the division of these localities into school districts.

These provisions have been superseded by charters of the several cities and the then villages which are now cities, and abrogated by L. 1864, Ch. 555.

R. S., Pt. 1, Ch. 15, Tit. 4. Section 1 provides that persons elected in any town as "The trustees of the gospel and school lot" shall be a corporation for the purposes of their office.

Section 2 provides for bond to be given to supervisor by trustees of gospel and school lot. Abrogated by L. 1846, Ch. 186, which abolished the office of trustee and imposed his powers and duties on the supervisor. Obsolete.

Section 3 consolidated in Education Law, § 280.

Section 4 requires board of town auditors to report the state of accounts of the trustees of the gospel and school lots at town meeting. Superseded by L. 1890, Ch. 569, § 161, which provides for auditing the accounts of town officers.

Section 5 consolidated in Education Law, § 281.

Section 6 consolidated in Education Law, § 282.

Section 7 provides for choosing trustees of gospel and school lots when there are none in office. Abrogated by L. 1846, Ch. 186, which abolished the office of trustee.

L. 1787, tenth session, Ch. 82. Repealing statute repeals "all acts and parts of acts heretofore passed by the legislature of this

state which come within the purview or operation of any of the acts passed during the present session of the legislature commonly called the Revised Acts." The statute affected amends and re-enacts the charter of the University of the State of New York. This "Comes within the purview" of 2 R. L., Ch. 59, §§ 1–20.

L. 1791, Ch. 45. Statute affected confers further powers upon the regents of the university, and therefore "comes within the purview" of 2 R. L., Ch. 59, §§ 1–20, and therefore is repealed as above.

L. 1795, Ch. 75. Provides for annual appropriations for the term of five years for school purposes and for distribution thereof. Temporary and obsolete.

L. 1796, Ch. 49. Amends L. 1795, Ch. 75. Temporary and obsolete.

L. 1798, Ch. 48. Makes special provisions for management of gospel and school lots in the county of Onondaga. In part temporary and the remainder superseded by R. S., Pt. 1, Ch. 15, Tit. 4. Obsolete.

L. 1801, Ch. 69. Provides for a gospel and school lot in each new town. Obsolete.

L. 1801, Ch. 195, § 28. Suspends the operation of L. 1795, Ch. 75. Obsolete.

L. 1802, Ch. 30. Authorizes the trustees of any incorporated academy to choose one of their body as president. Covered by L. 1892, Ch. 378, § 34. Obsolete.

L. 1807, Ch. 135. Gospel and school lots. Partly obsolete and balance superseded by R. S., Pt. 1, Ch. 15, Tit. 4.

L. 1808, Ch. 218. Makes provision for division of rents and profits of gospel lots among the several religious societies in the township, and of the school lots among the schools. Superseded by R. S., Pt. 1, Ch. 15, Tit. 4. Obsolete.

L. 1811, Ch. 246, §§ 53, 54. Provides for an annual payment to the regents of the university and for appointment of five commissioners to report a system of common schools. Temporary and obsolete.

L. 1812, Ch. 131. Authorizes the regents to establish a college of physicians and surgeons at Fairfield, Herkimer county. Temporary and obsolete.

L. 1813, Ch. 100. Gospel and school lots. Partly obsolete and balance superseded by R. S., Pt. 1, Ch. 15, Tit. 4.

R. L. 1813, Ch. 59, p. 260. L. 1828, Ch. 21, § 1, ¶ 549, repeals "all statutes and parts of statutes consolidated and re-enacted in the Revised Statutes or repugnant to the provisions contained therein."

R. L. 1813, Ch. 82, § 17. Extends the time for payment of principal upon certain mortgages transferred by the comptroller to the trustees of Hamilton college. Temporary and obsolete.

L. 1814, Ch. 27. Regulates the distribution of money then in the treasury for the use of common schools. Temporary and obsolete.

L. 1816, Ch. 202. Gospel and school lots. Partly obsolete and balance superseded by R. S., Pt. 1, Ch. 15, Tit. 4.

L. 1819, Ch. 164. Gospel and school lots. Covered by R. S., Pt. 1, Ch. 15, Tit. 4.

L. 1819, Ch. 239. Section 1 rewritten and consolidated in Education Law, § 280, subd. 11. Balance covered by R. S., Pt. 1, Ch. 15, Tit. 4.

L. 1820, Ch. 224. Extends the time for reports from trustees of common school districts to school commissioners for the current year. Temporary.

L. 1821, Ch. 48. Condones certain omissions by school trustees to make report to school commissioners for the year 1820. Temporary.

L. 1821, Ch. 61. Statute affected relates to Lancaster and Bell schools; it is consolidated in R. S., Pt. 1, Ch. 15, Tit. 1, Art. 6, §§ 57–66, and therefore repealed by L. 1828, Ch. 21, § 1, ¶ 549, second meeting.

L. 1821, Ch. 73. Authorizes the State treasurer to pay out the amount of an appropriation for common schools in the year 1819. Temporary.

L. 1822, Ch. 234. Makes provision for instruction of indigent deaf and dumb persons in the New York State institution for the instruction of the deaf and dumb. The act is limited to continue in force for four years. Temporary.

L. 1823, Ch. 189. Establishes a central asylum for instruction of the deaf and dumb in the town of Canajoharie. The act is

limited to continue in force until January 1, 1840. Temporary and obsolete.

L. 1824, Ch. 131. Gospel and school lots. Superseded by R. S., Pt. 1, Ch. 15, Tit. 4.

L. 1825, Ch. 166, §§ 1-3, 5. Section 1 extends for five years an act relating to the deaf and dumb, passed April 16, 1822. Temporary.

Sections 2, 3, 5, provided for admissions to the central asylum for the instruction of the deaf and dumb. These sections are covered by L. 1864, Ch. 555, Tit. 1, §§ 9, 10. Section 4 was local.

L. 1826, Ch. 30. Gospel and school lots. Superseded by R. S., Pt. 1, Ch. 15, Tit. 4.

L. 1827, Ch. 97. Provides regarding admission and retention of pupils in institutions for deaf-mutes. Parts not repealed are superseded by L. 1864, Ch. 555, Tit. 1, §§ 9, 10.

L. 1829, Ch. 287, §§ 2-9. Relates to the appropriation for school purposes of moneys in the hands of superintendents of the poor. The records of the educational department fail to show that advantage has ever been taken of this statute. Inoperative and obsolete.

L. 1829, Ch. 376, § 5. Provides for payment to superintendent of common schools of $250 annually "in addition to his compensation as secretary of State and superintendent." Obsolete.

L. 1830, Ch. 170. Regulates admission of pupils to New York institution for the instruction of the deaf and dumb. Expired by its own limitation in five years. Temporary.

L. 1830, Ch. 219. Fixes salary of librarian of the state library at $500 a year. Obsolete.

L. 1830, Ch. 284, § 2. Amends R. S., Pt. 1, Ch. 15, Tit. 2, §§ 153–155, which relate to Poughkeepsie when a village and Poughkeepsie Lancaster schools. Obsolete.

L. 1830, Ch. 320, §§ 5-7. Section 5 regulates apportionment of school moneys. Covered by L. 1864, Ch. 555, Tit. 3.

Section 6 is a repealing section.

Section 7 amends R. S., Pt. 1, Ch. 15, Tit. 2, Art. 5, by striking out §§ 110–111 and inserting a new § 110. Said article 5, as so amended, was amended "to read as follows" by L. 1847, Ch. 480, § 7.

L. 1831, Ch. 44. Sections 1–5 regulate the change of schoolhouse site and sale of former site. Covered by L. 1864, Ch. 555, Art. 2. Balance unnecessary.

L. 1831, Ch. 142. Regulates admission of pupils into Central Asylum for instruction of deaf and dumb. Expired by its own limitation in five years. Temporary.

L. 1831, Ch. 206. Section 1 amends R. S., Pt. 1, Ch. 15, Tit. 2, Art. 3, § 26, and same, Art. 5, § 88, which articles 3 and 5 were amended "to read as follows" by L. 1847, Ch. 480, § 7.

L. 1832, Ch. 223. Regulates selection of State pupils to institution for the instruction of the deaf and dumb. Superseded by L. 1864, Ch. 555, Tit. 1, §§ 9, 10.

L. 1832, Ch. 299. Authorizes superintendent of common schools to furnish to each of the school districts in the State a copy of Hall's lectures on school keeping. Temporary.

L. 1832, Ch. 317. Section 1 regulates collection of taxes directed to be raised by L. 1831, Ch. 206, above. Obsolete. Section 2 is a repeal.

L. 1833, Ch. 19. Section 1 is repealed as appears in the schedule; section 2 fixes the salary of the State librarian at $700 per annum. Obsolete.

L. 1833, Ch. 109. Regulates admission of State pupils to institution for the instruction of the deaf and dumb, such pupils to be retained five years from October 1, 1833. Temporary.

L. 1834, Ch. 140. Relates to distribution of literature fund. Section 2 repealed by L. 1892, Ch. 378, § 52. Section 1 covered by provisions of L. 1892, Ch. 378, § 26. Section 3 is a repeal.

L. 1834, Ch. 241. Relates to distribution of literature fund. Covered by provisions of L. 1892, Ch. 378, § 26.

L. 1835, Ch. 34. Sections 1, 2 authorize the superintendent of common schools to furnish to each of the school districts two copies of the report of a committee of the regents. Temporary. Section 3 is repealed, as appears in schedule. Section 4, when to take effect.

L. 1835, Ch. 80. Authorizes establishment, support and care of district libraries. Superseded by L. 1864, Ch. 555, Tit. 8.

L. 1835, Ch. 308. Sections 1 and 2 amend R. S., Pt. 1, Ch. 15, Tit. 2, article 3, §§ 29, 30, and article 6, §§ 112, 115, which

articles 3 and 6 were amended "to read as follows" by L. 1847, Ch. 480, § 7.

Section 3 regulates warrants issued by trustees for collection of rate bills. Rate bills have been abolished. Obsolete.

Sections 4, 5 authorize sale of former site of school house and use of proceeds of such sale. Partly abrogated and partly superseded by L. 1864, Ch. 555, Tit. 7, §§ 20–22.

L. 1836, Ch. 142. Section 1 is repealed, as appears in the schedule; sections 2 and 3 make appropriation for geological survey and provide for a report of such survey. Temporary.

L. 1836, Ch. 226, §§ 1-3. Relates to State pupils in New York institution for instruction of the deaf and dumb. Section 1 temporary, obsolete. Section 3 superseded by L. 1864, Ch. 555, Tit. 1, §§ 9, 10. Section 2 heretofore repealed, as appears in the schedule.

L. 1836, Ch. 228, §§ 2-4. Regulates admission of State pupils to New York institution for the instruction of the deaf and dumb. Expired by its own limitation in four years. Temporary.

L. 1836, Ch. 511, § 3. Extends for five years L. 1830, Ch. 170, relating to New York institution for deaf and dumb. Temporary.

L. 1837, Ch. 200. Makes allowance for secretary of State in his capacity as superintendent of common schools of additional sums for salary and clerk hire. Obsolete.

L. 1837, Ch. 241. Regulates reports by school trustees, school commissioners and institutions having departments for instruction of teachers; also compensation of commissioners of common schools and authorizes inhabitants of school districts to vote a tax for the purchase of a book of records.

Section 1 superseded by L. 1864, Ch. 555, Tit. 7, § 55.

Sections 2, 3 relate to report of commissioners of common schools and provide a penalty for failing to render such report. Office of commissioner abolished by L. 1843, Ch. 133, and the duties, restrictions and liabilities of the office imposed on town superintendent of common schools. L. 1847, Ch. 480, abrogates all former acts in regard to said commissioner and superintendent.

Section 4 superseded by L. 1864, Ch. 555, Tit. 7, § 7.

Section 5 superseded by same, Tit. 2, § 7.

Section 6 superseded by same, Tit. 7, § 16, subd. 13.

L. 1837, Ch. 298. Directs superintendents of schools to publish school laws and superintendents' decisions. Temporary.

L. 1838, Ch. 244. Sections 1 and 2 are superseded by L. 1864, Ch. 555, Tit. 1, §§ 9, 10. Section 3 was amended to "read as follows" and hence repealed, as appears in the schedule.

L. 1839, Ch. 177. Regulates school district libraries. Superseded by L. 1864, Ch. 555, Tit. 8.

L. 1839, Ch. 200. Section 1 regulates admission of State pupils, for a period of not to exceed five years, to New York institution for the blind. Temporary.

Sections 2, 3 make appropriation for completion of building of New York State institution for the blind. Temporary.

Section 4 authorizes payment of appropriation of school fund to managers of New York institution for the blind. Superseded by L. 1882, Ch. 410, § 1069.

Sections 5, 6 have been amended "to read as follows" and constructively repealed, as appears in the schedule.

Section 7, when to take effect, dependent.

L. 1839, Ch. 330. Sections 1–4 regulate provision by boards of supervisors for the raising of school moneys. Abrogated by L. 1864, Ch. 555, Tit. 3, which prescribes a different procedure.

Section 5 is repealed, as appears in the schedule.

Section 6 provides for fines and penalties incurred by commissioners of common schools, trustees and clerks of school districts. The office of commissioner of common schools was abolished by L. 1843, Ch. 133, § 1, which act imposed all his duties, restrictions and liabilities on a new officer, called the town superintendent of common schools. Penalties incurred by school district officers, including the town superintendent, superseded by L. 1847, Ch. 480, § 145.

Section 7 provides for authentication of copies of papers filed in the office of the superintendent of common schools. Superseded by L. 1864, Ch. 555, Tit. 1, § 6.

Section 8 provides for appointment by superintendent of common schools of school visitors. Superseded by L. 1864, Ch. 555, Tit. 1, § 12.

L. 1840, Ch. 174, § 2. Authorizes reception of additional State pupils from each senate district at the New York institution for

the instruction of the deaf and dumb. Superseded by L. 1845, Ch. 14, § 2.

L. 1840, Ch. 366. Authorizes the regents to confer the honorary degree of doctor of medicine. Superseded by L. 1889, Ch. 529, Tit. 3, § 1.

L. 1840, Ch. 381. Section 1 makes appropriation to the trustees of the State library. Temporary.

Section 2 makes the secretary of State, the comptroller and the attorney-general acting trustees in the State library. By L. 1892, Ch. 378, § 10, the regents have all powers of trustees of the State library. Obsolete.

Section 4 is a repeal.

Section 5 authorizes trustees of library to fix salary of librarian not to exceed $800 per year. Obsolete.

Section 6, when to take effect.

L. 1841, Ch. 163. Continues in force for five years §§ 2, 3, L. 1836, Ch. 228, relating to New York institution for the instruction of the deaf and dumb. Temporary.

L. 1841, Ch. 260. Section 1 amends R. S., Pt. 1, Ch. 15, Tit. 2, Art. 3, § 26, which article was amended "to read as follows" by L. 1847, Ch. 480, § 7.

Sections 2–8, 10, 11, 13–18, 20–41 contain numerous provisions relating to common schools, all of which are covered by or superseded as follows:

Section 2 superseded by L. 1847, Ch. 480, § 14.

Sections 3–5 by same, §§ 50–52.

Section 6 abrogated by same, § 33.

Sections 7, 8 superseded by same, §§ 59, 60.

Section 9 is repealed as appears in the schedule.

Sections 10, 11 by same, §§ 59, 60, 104.

Section 12 is repealed as appears in the schedule.

Section 13 by same, § 82.

Section 14 by same, § 109.

Section 15 by same, § 147.

Section 16 abrogated by L. 1843, Ch. 133, § 2, and L. 1847, Ch. 480, § 6.

Sections 17–19 superseded by L. 1847, Ch. 480, §§ 66–68, 85.

Sections 20–26 by same, §§ 89–95.

Section 27 by same, § 86.

Section 28 by same, § 103.

Section 29 by same, § 110.

Section 30 by same, § 84.

Section 31 abrogated by L. 1864, Ch. 555, Tit. 5.

Section 32, temporary.

Section 33 by same, § 146.

Section 34 by same, §§ 116, 118.

Section 35 by same, § 120.

Sections 36–39 relate to office and duties of "deputy superintendent of common schools." Title changed to "county superintendent" by L. 1843, Ch. 133, § 20, and office abolished by L. 1847, Ch. 358, § 1.

Section 40 abrogated by L. 1847, Ch. 480, which supersedes provisions of parts of the Revised Statutes relating to appeals referred to in said section.

Section 41 superseded by L. 1864, Ch. 555, Tit. 1, § 2.

Sections 42, 43, authorize superintendent of schools to furnish to each school district a copy of the county map, and to furnish certain forms and copies of R. S., Pt. 1, Ch. 15, Tit. 2. Temporary. Obsolete.

Section 44 is repealed, as appears in the schedule.

L. 1842, Ch. 273. Makes an exception so far as the trustees of the first school district in the city of Troy are concerned to L. 1839, Ch. 177, § 6, relating to application of library moneys. Obsolete.

L. 1843, Ch. 85. Sections 2, 3, 5, authorize continuance of geological survey of the State with arrangement of geological specimens and publication and sale of survey. Temporary.

Sections 1, 4 are repealed, as appears in the schedule.

Section 6, when to take effect.

L. 1843, Ch. 133. Sections 1–3, 12–19 relate to the town superintendent of common schools. Abrogated by L. 1847, Ch. 480, § 150, because repugnant to the provisions of said act.

Sections 4–11, 20 relate to the office of county superintendent of common schools, which office was abolished by L. 1847, Ch. 358. Obsolete.

L. 1844, Ch. 234. Provides for payment of certain school moneys to trustees of the academy of Erasmus Hall so long as no

common school distinct from said academy is taught in that part of the town of Flatbush commonly called the "old town." Obsolete.

L. 1844, Ch. 255. Sections 1–8 are repealed, as appears in schedule.

Section 9 is a repeal.

Section 10, when act shall take effect.

L. 1844, Ch. 261. Provides for incorporation of the "New York State Agricultural School." No such school is in existence. Obsolete.

The New York State school of agriculture of Saint Lawrence university was established by L. 1906, Ch. 682, which is made article 45 of the Education Law.

L. 1844, Ch. 311. Establishes the Albany State normal school.

Section 3 consolidated in Education Law, § 680. Balance temporary and obsolete.

L. 1845, Ch. 14, § 2. Authorizes admission of additional State pupils in New York institution for instruction of the deaf and dumb. Superseded by L. 1854, Ch. 272, § 1.

L. 1845, Ch. 179. Sections 2, 4 give the executive committee of the New York State agricultural society use of the State cabinets of natural history. Abrogated by L. 1870, Ch. 557.

Sections 1, 3 are repealed, as appears in the schedule.

Section 5, when to take effect.

L. 1846, Ch. 45. Section 1 excludes from enumeration in trustees' reports Indian children who have not attended school for at least three years. Superseded by L. 1847, Ch. 480, § 116.

Section 2 is repealed, as appears in the schedule.

Section 3, when to take effect.

L. 1846, Ch. 66. Provides for payment of liabilities of dissolved school districts. Abrogated by L. 1847, Ch. 480, § 53.

L. 1846, Ch. 74. Consolidated in Education Law, § 1105.

L. 1846, Ch. 186. Abolishes office of trustee of gospel and school lots and confers powers on town superintendent of schools. Superseded by L. 1864, Ch. 555, Tit. 4, § 1.

L. 1846, Ch. 323. Authorizes trustees of State library to complete certain improvements. Temporary.

L. 1847, Ch. 50. Makes appropriation for State normal schools for two years. Temporary.

L. 1847, Ch. 172. Sections 1, 2 have been amended "to read as follows," as appears in schedule.

Sections 3, 4 regulate proceedings by board of supervisors in matter of claim by school officer for repayment of costs and expenses incurred by him by virtue of defense of suit against him for any act performed by virtue of or under cover of his office. Superseded by L. 1864, Ch. 555, Tit. 13, §§ 10, 11.

Section 5, when to take effect.

L. 1847, Ch. 208, §§ 2, 3. Section 2 is repealed by L. 1892, Ch. 679, § 113, because amendatory of L. 1846, Ch. 114, § 2, which was repealed in the schedule thereof.

Section 3 is a repealing section.

L. 1847, Ch. 211. Permits payment of certain district taxes directly to trustees. Superseded by L. 1864, Ch. 555, Tit. 7, § 84.

L. 1847, Ch. 212. Sections 1, 2 are repealed, as appear in the schedule.

Sections 3–5 authorize payment of certain expenses for completion of natural history of the State. Temporary.

Section 6, when to take effect.

L. 1847, Ch. 273. Makes appropriation for State library and fixes salary of librarian, assistant librarian and messenger. Temporary and obsolete.

L. 1847, Ch. 358. Abolishes office of county superintendent of common schools. Provides that reports required to be made by town superintendent to the county superintendent shall be transmitted to the county clerk, who shall transmit abstracts to the State superintendent. Superseded by L. 1847, Ch. 480, § 19.

L. 1847, Ch. 361. Provides for the establishment of teachers' institutes. Superseded by L. 1864, Ch. 555, Tit. 11.

L. 1847, Ch. 388. Section 1 provides that appeals authorized to be brought to a county superintendent of common schools may be brought directly to the superintendent of common schools. Superseded by L. 1847, Ch. 480, § 132.

Section 2 is a repeal and section 3 is when to take effect.

L. 1847, Ch. 443. Provides for equalization of assessments where a school district embraces more than one town. Superseded by L. 1864, Ch. 555, Tit. 7, § 69.

L. 1847, Ch. 480. Sections 1–14, 16, 18–46, 52–60, 62–75,

77–81, 82, subds. 1–7, 9–13, §§ 84, 86–89, 91, 92, 94–98, 101–104, 109–115, 116, subds. 1, 2, 5, §§ 117–122, 124–131, 133–146, 148–150, which were not amended "to read as follows" or specifically repealed, as otherwise indicated in the schedule, were abrogated by L. 1864, Ch. 555, Tit. 13, § 14, because inconsistent with the provisions of said act.

L. 1847, Ch. 485. Sections 1, 3 make appropriation for public instruction in orphan asylums and for compliance with conditions thereof. Temporary.

Section 5, when to take effect.

Sections 2, 4 regulate public instruction in orphan asylums and reports to be made by officers of such asylums. Consolidated in Education Law, §§ 861, 862, respectively.

L. 1848, Ch. 318. Provides for erection of a building for the Albany State normal school and the establishment thereof.

Section 3 consolidated in Education Law, § 680. Balance temporary.

L. 1849, Ch. 300. Sections 1–4, 6 establish library of the Court of Appeals, the location thereof to be "at some place west of the seat of government." Covered by Education Law, Art. 42.

Section 5 is repealed, as appears in the schedule.

Section 7, when act takes effect.

L. 1849, Ch. 382. L. 1864, Ch. 555, Tit. 13, § 14, contains a provision repealing all acts repugnant to or inconsistent with the provisions of said act.

Statute cited is abrogated by said L. 1864, Ch. 555, as follows:

Section 2 superseded by Tit. 6, §§ 8, 9.

Section 3 superseded by Tit. 7, §§ 25, 26.

Section 4 superseded by Tit. 7, §§ 65, 81.

Section 5 superseded by Tit. 7, §§ 82, 84.

Section 6 superseded by Tit. 7, §§ 49, 81, 84.

Section 7 superseded by Tit. 7, § 50.

Section 8 superseded by Tit. 7, § 60.

Section 9, so far as it provides for repairs of school houses, superseded by Tit. 7, § 50.

Section 9, balance, and section 10 repugnant to said act of 1864 and hence repealed by Tit. 13, § 14, thereof.

Section 11 superseded by said act, Tit. 7, § 41.

Section 12 superseded by same, Tit. 7, § 48.

Sections 14–15 repugnant to provisions of said act of 1864 and hence repealed by Tit. 13, § 14 thereof.

Section 1 is a repealing section.

Section 16 is amended "to read as follows," as appears in schedule.

L. 1850, Ch. 7. Section 1 amends L. 1849, Ch. 140, which was repealed by L. 1851, Ch. 151, § 9. Amendatory act dependent on statute affected and inoperative without latter.

Section 2 validates certain acts under said L. 1849, Ch. 140. Obsolete.

L. 1850, Ch. 89. Consolidated in Education Law, §§ 675–679.

L. 1850, Ch. 184. Provides that supervisors may require further security from town superintendents of common schools. Latter office abolished by L. 1856, Ch. 179, § 17.

L. 1850, Ch. 360. Sections 1–3 have been repealed, as appears in the schedule.

Section 4, when to take effect.

L. 1850, Ch. 378. Purports to submit to the people to determine by ballot whether L. 1847, Ch. 480; L. 1849, Ch. 140, and L. 1849, Ch. 404, relating to free schools, shall be repealed. Temporary.

L. 1851, Ch. 151. Provides for free instruction in common schools, the assessment and apportionment of the State tax to meet the expense thereof, the publication of the school law by the State superintendent and for reports to be made by trustees.

Sections 2, 3 superseded by L. 1856, Ch. 180.

Sections 4, 5 are repealed, as appears in the schedule.

Section 9 is a repealing section.

Balance abrogated by L. 1864, Ch. 555, Tit. 13, § 14, because inconsistent with the provisions of said act.

L. 1851, Ch. 425. Construes L. 1851, Ch. 151, recommended for repeal above. Obsolete.

L. 1851, Ch. 449. Provides for the purchase by State superintendent of common schools of a copy of Webster's unabridged dictionary for each school district desiring it. Temporary.

L. 1851, Ch. 500. Legalizes certain acts in raising money by tax for support of common schools. Temporary.

L. 1852, Ch. 97. Provides for the reception of additional State

pupils in New York institution for the instruction of the deaf and dumb. Superseded by L. 1854, Ch. 272.

L. 1852, Ch. 333, §§ 2–4. Provides for the reception of additional State pupils in New York institution for the blind. Superseded by L. 1864, Ch. 555, Tit. 1, §§ 9, 10.

L. 1853, Ch. 78. Amends L. 1849, Ch. 382, § 16, by striking therefrom the repeal thereby made by L. 1847, Ch. 480, § 132. Said latter act was abrogated by L. 1864, Ch. 555, Tit. 13, § 14, and statute is therefore obsolete.

L. 1853, Ch. 115. Provides for continuing at the New York institution for the instruction of the deaf and dumb a certain number of pupils for a period not exceeding three years. Superseded by L. 1854, Ch. 272.

L. 1853, Ch. 433. Sections 1–8, 10–18 provide for the establishment of union free schools. Superseded by L. 1864, Ch. 555, Tit. 9.

Section 9 has been repealed, as appears in the schedule.

Section 19, when to take effect.

L. 1853, Ch. 491. Provides for repayment to trustees or collectors of the amount recovered from them for the collection of any tax under L. 1849, Ch. 140. Temporary.

L. 1854, Ch. 97. Provides for election of State superintendent of public instruction and regulates his powers and duties. Office abolished by L. 1864, Ch. 555, Tit. 1.

L. 1854, Ch. 167. Makes appropriation for two years for a school for the Onondaga Indians. Temporary.

L. 1854, Ch. 228. Section 1 provides that bills to the State which have heretofore been paid to the secretary of State in the capacity of superintendent of common schools shall hereafter be paid into the State treasury.

Sections 2–4 regulate authority of superintendent of public instruction in regard to payment of school moneys. Superseded by L. 1864, Ch. 555, Tit. 3, §§ 1–3.

L. 1854, Ch. 272, §§ 1–3. Provides for admission of indigent deaf and dumb persons to New York institution for instruction of deaf and dumb. Superseded by L. 1864, Ch. 555, Tit. 1, §§ 9, 10. Section 3 is repealed by construction as appears in the schedule.

L. 1855, Ch. 18. Section 1 makes appropriation for support of schools. Temporary.

Section 2 authorizes comptroller to withhold payment of public moneys from any county until all moneys required to be raised for schools in that county have been collected and accounted for. Superseded by L. 1864, Ch. 555, Tit. 3, § 4.

Section 3 limits application of L. 1854, Ch. 228, which was superseded by L. 1864, Ch. 555, Tit. 3, §§ 1–3.

L. 1855, Ch. 91. Sections 1, 2 are repealed, as appears in schedule.

Section 3 is an inconsistent repeal and section 4 is when act takes effect.

L. 1855, Ch. 178. Postpones payment of appropriation for academies. Temporary.

L. 1855, Ch. 410. Sections 1, 2 have been repealed, as appears in schedule. All that remains is section 3, when act takes effect.

L. 1855, Ch. 539, § 1, pt. relating to indigent blind. Superseded by L. 1894, Ch. 556, Tit. 15, § 41, as amended.

L. 1856, Ch. 168. Sections 1–3 are repealed, as appears in schedule.

Section 4 is a repeal.

Section 5, when act takes effect.

L. 1856, Ch. 180. Provides for the raising of an annual State tax of three-fourths of a mill upon each dollar of valuation for support of common schools and for the assessment and apportionment thereof. Superseded by L. 1864, Ch. 555, Tit. 3.

L. 1857, Ch. 51, §§ 3, 4. Section 3 requires each supervisor to give bond as security for school moneys.

Section 4 provides for raising money to supply deficiency caused by the defalcation of a supervisor. Superseded by L. 1864, Ch. 555, Tit. 3, § 31.

L. 1858, Ch. 151. Regulates the date of beginning of school year; provides for annual district meetings, regulates powers of electors and powers and duties of school officers and application of library money.

Sections 1, 2 are superseded by L. 1864, Ch. 555, Tit. 7, § 60.

Section 3 by same, § 9.

Section 4 temporary.

Section 5 superseded by same, Tit. 7, § 16.
Section 6 by same, § 27.
Section 7 by same, § 47.
Section 8 by same, § 26.
Section 9 by same, § 28.
Sections 10, 11 by same, §§ 83, 88.
Section 12 by same, Tit. 8, § 4.
Section 13 is inoperative and obsolete.
Section 14 has been "amended to read as follows," as appears in the schedule.
Section 15, when act takes effect.

L. 1859, Ch. 230. Establishes the Supreme Court library at Binghamton. Part obsolete and balance consolidated in Education Law, § 1065.

L. 1859, Ch. 278. Authorizes New York institution for the blind to convey its real estate, regulates the application of the proceeds thereof. Temporary.

L. 1859, Ch. 395. Sections 1–3 are repealed, as appears in schedule.
Section 4 repeals inconsistent acts.
Section 5, when act shall take effect.

L. 1860, Ch. 314. Authorizes trustees to insure school houses. Superseded by L. 1864, Ch. 555, Tit. 7, § 49, subd. 7.

L. 1860, Ch. 402. Provides for a Supreme Court library at Binghamton. Part temporary and part superseded by L. 1893, Ch. 58, § 1.

L. 1860, Ch. 456. Requires school commissioners to see that school district lines are correctly described and recorded. Superseded by L. 1864, Ch. 555, Tit. 2, § 13.

L. 1862, Ch. 351. Section 1 authorizes supervisors to raise money to be used to supply clothing to State institution for blind pupils. Part obsolete; balance consolidated in Education Law, § 925.

Section 2 authorizes superintendent of public instruction to inspect New York institution for the blind and to require some portion of the expense of educating and clothing pupils to be paid by their parents or guardians. Superseded by L. 1864, Ch. 555, Tit. 1, §§ 8–10.

L. 1862, Ch. 384. Section 1 superseded by L. 1864, Ch. 555, Tit. 11, § 6.

Sections 3, 4 by same, §§ 4, 5.

Section 5 amends a saving section of L. 1858, Ch. 151, § 14, which statute is superseded.

Section 6 superseded by same, Tit. 2, § 10.

Sections 7, 8 are dependent on balance of act.

Section 2 is amended "to read as follows," as appears in the schedule.

L. 1862, Ch. 450. Provides that any union school by complying with the requirements of the regents shall be entitled to the benefits of academies. Superseded by L. 1864, Ch. 555, Tit. 9, § 27.

L. 1863, Ch. 378. By section 4 sections 1–3 are substituted in place of L. 1847, Ch. 480, § 17, recommended for repeal above. Superseded as follows:

Sections 1, 2 by L. 1864, Ch. 555, Tit. 4, §§ 4, 5.

Section 3 by same, Tit. 3, § 27.

Section 4 inoperative without balance of act.

Sections 5, 6 relate to reimbursement of officers of school districts for costs and expenses in actions against them as such officers. Superseded by L. 1864, Ch. 555, Tit. 13, §§ 8, 9.

Section 7 relates to teachers' institutes. Superseded by L. 1864, Ch. 555, Tit. 11, § 3.

Section 8 regulates raising of money at district meetings for expenses of academies and union free schools. Superseded by L. 1864, Ch. 555, Tit. 9, § 10.

Section 9 provides for revision of school law. Temporary.

Section 10, when to take effect.

L. 1863, Ch. 401. Section 1 establishes the law library of the eighth judicial district at Buffalo. Covered by Education Law, § 1057.

Section 3 provides for placing of duplicates from State library in said law library. Temporary.

Section 2 amended "to read as follows" and § 4 repealed as appears in the schedule.

Section 5 makes appropriation for said library. Temporary.

Section 6, when to take effect. (See also note 253.)

L. 1863, Ch. 418. Sections 1, 5 amended "to read as follows," as appears in schedule.

Sections 2, 3 provide for supervision of Oswego State normal

school and report from executive committee thereof. Part obsolete. Covered by Education Law, §§ 661, 662.

Section 4. Temporary. For repeal.

Section 6, when to take effect.

L. 1863, Ch. 463. Section 1 covered by Education Law, § 1057.

Section 2 consolidated in Education Law, § 1059.

Section 3 provides for punishment of anyone who shall wilfully injure the property of the second judicial district law library. Covered by Penal Code, §§ 648, 654.

Section 4 makes appropriation for said library. Temporary.

Section 5, when to take effect.

L. 1864, Ch. 386. Consolidated in Education Law, § 925.

L. 1864, Ch. 556. Provides for annual appropriation for instruction of teachers. Superseded by L. 1890, Ch. 170.

L. 1865, Ch. 445. Makes provision for support of Oswego State normal school, with regulations for admission thereto. So far as it establishes said normal school covered by Education Law, § 660; balance partly temporary and the remainder superseded by L. 1866, Ch. 466, which is consolidated in article 26 of said law.

Section 3 makes appropriation for said normal school for the year 1864–65. Temporary.

L. 1865, Ch. 585. Incorporates Cornell University.

Section 1 covered by Education Law, § 1120.

Section 6 obsolete.

Section 8 consolidated in § 1126.

Section 10 temporary and obsolete.

Section 11 obsolete.

Section 12 covered by Constitution, Art. 8, § 1.

Section 13 is when act shall take effect.

Sections 2–5, 7, 9 are constructively repealed, as appears in the schedule.

L. 1865, Ch. 587. Sections 1–9 provide for appointment of commissioners for selection of a site and erection of buildings for the New York State institution for the blind. Temporary.

Sections 10–14 provide for appointment of trustees for said institution and management of the same and admission of pupils thereto. Superseded by L. 1867, Ch. 744.

Section 15 makes appropriation. Temporary.

Section 16 dependent.

L. 1865, Ch. 722. Sections 1–3 establish and provide for management of the New York law library. Consolidated in Education Law, §§ 1054, 1055.

Section 4 is repealed, as appears in schedule.

Section 5 makes appropriations for library. Temporary.

Section 6 is " This act shall take effect immediately."

L. 1866, Ch. 466. Sections 1, 2 provide for a commission to receive proposals in regard to the establishment of the normal schools and gives authority for raising money to carry such proposals into effect. Temporary.

Sections 3, 5 amended " to read as follows," as appears in schedule.

Sections 4, 6 consolidated in Education Law, §§ 664, 666.

Section 7, when act takes effect.

L. 1866, Ch. 708. Regulates rate to be allowed for pupils in New York institution for instruction of deaf and dumb for two years. Temporary.

L. 1866, Ch. 882. Section 1 covered by Education Law, § 1057.

Sections 2, 3 consolidated in same, § 1063.

Section 4 is repealed as appears in schedule.

Section 5 makes appropriation for law library in fourth judicial district. Temporary.

Section 6 is " This act shall take effect immediately."

L. 1867, Ch. 583. Makes provision for acceptance of proposals for Buffalo State normal school. Temporary.

L. 1867, Ch. 725. Regulates rate for pupils in New York institution for deaf and dumb. Superseded by L. 1875, Ch. 213, § 3.

L. 1867, Ch. 744. Sections 1, 2, 4–9, 11–13, 15–20, 23, 24, consolidated in Education Law, §§ 940–961.

Sections 3, 10, 14 repealed by construction as appears in the schedule.

Sections 21, 22 are temporary.

L. 1869, Ch. 18. Consolidated in Education Law, §§ 661, 665.

L. 1870, Ch. 166. Sections 1, 2, regulate admissions of pupils to New York institution for the blind. Covered by L. 1894, Ch. 556, Tit. 15, Art. 14, §§ 41, 42.

Sections 3, 4, consolidated in Education Law, § 925.

L. 1870, Ch. 180. Section 1 is amended "to read as follows" as appears in schedule.

Section 2 covered by provisions of L. 1875, Ch. 213.

Section 3 is repealed as appears in schedule.

L. 1870, Ch. 492, § 2 pt. Abrogated by L. 1897, Ch. 413, § 37, as amended by L. 1901, Ch. 457.

L. 1870, Ch. 565. Empowers commissioners to accept proposals for Nyack State normal school. Temporary.

L. 1871, Ch. 166. Consolidated in Education Law, § 925.

L. 1872, Ch. 392. Provides for payment of expenses and care of Supreme Court library at Binghamton.

Sections 1–3 have been amended "to read as follows" as appears in schedule.

Section 4 consolidated in Education Law, § 1065.

Section 5 superseded by L. 1893, Ch. 58.

Section 6 repeals inconsistent statutes and specifies when act shall take effect.

L. 1872, Ch. 616. Consolidated in Education Law, § 943.

L. 1873, Ch. 463. Section 1 consolidated in Education Law, § 955.

Section 2 consolidated in same, § 950.

L. 1873, Ch. 642, §§ 4–11. Section 4 is repealed as appears in schedule.

Sections 5, 6, authorize regents to apportion a certain sum per year and use the same for free instruction in the higher branches under rules prescribed by said regents. The act has been inoperative since its enactment and the subject is fully covered by the various appropriation acts.

Section 7 provides for distribution of apportionment to academies with provision that "no money shall be paid to any school under control of any religious or denominational sect or society." Covered by State Constitution, article 9, § 4.

Sections 8, 9, authorize regents to make regulations for the purposes of the act and the treasurer to pay the amounts appropriated. Temporary.

Section 10 provides for reports by academies to the regents. Covered by L. 1892, Ch. 378, § 25.

Section 11, when act takes effect.

L. 1874, Ch. 45. Provides for the number of school commissioners in the county of Steuben. Covered by L. 1894, Ch. 556, Tit. 5.

L. 1874, Ch. 253. Provides for admission of pupils in deaf mute institutions. Superseded by L. 1875, Ch. 213, §§ 2, 3.

L. 1875, Ch. 213. Sections 1, 3 consolidated in Education Law, §§ 927, 929, 930.

Sections 2, 5 have been heretofore repealed as appears in the schedule.

Section 6, when to take effect. No § 4 in the act as enacted.

L. 1876, Ch. 318. Consolidated in Education Law, § 1062.

L. 1876, Ch. 372. Amends L. 1874, Ch. 421, which was repealed by L. 1896, Ch. 606, § 6. Obsolete.

L. 1877, Ch. 425, §§ 1–6. Sections 1–5 provide for teachers' classes in academies and union schools and make appropriations therefor. Superseded by L. 1890, Ch. 170.

Section 6 provides for regents' examinations in schools. Superseded by L. 1889, Ch. 529, Tit. 3, §§ 1, 2.

L. 1880, Ch. 348. Sections 1, 3 consolidated in Education Law, §§ 663, 669 respectively.

Section 2 has been heretofore repealed as appears in the schedule.

Section 4, when to take effect.

L. 1880, Ch. 549, § 1, pt. Section 1, so far as amendatory of L. 1879, Ch. 272, is superseded by L. 1894, Ch. 556, Tit. 15, § 41, and State Charities Law, § 16.

L. 1881, Ch. 377. Provides for the appointment of a State entomologist by the Governor and fixes his salary. Abrogated by L. 1883, Ch. 355, which makes the regents trustees of the State museum and provides that said trustees shall appoint the scientific staff of the museum, specifically naming the entomologist as one of the staff. Provided for by Education Law, §§ 331, 1092.

L. 1881, Ch. 675. Section 1 amended "to read as follows" as appears in schedule.

Sections 2–5 consolidated in Education Law, §§ 399–402.

Section 6 is dependent.

L. 1882, Ch. 51. Sections 1, 2, 4 consolidated in Education Law, § 1066.

Section 3 is amended "to read as follows" as appears in schedule.

Section 5 is dependent.

L. 1882, Ch. 147. Consolidated in Education Law, §§ 1122, 1124.

L. 1882, Ch. 318. Sections 1, 2, relate to teachers' classes. Embodied in L. 1894, Ch. 556, Tit. 11, §§ 6, 7.

Section 3 relates to licenses to teach granted to those who take instruction in teachers' classes. Superseded by L. 1894, Ch. 556, Tit. 5, § 13, ¶ 5, and Tit. 11, § 7.

L. 1883, Ch. 270. Consolidated in Education Law, § 1065.

L. 1883, Ch. 328. Ratifies election of state superintendent of public instruction in 1883. Temporary.

L. 1883, Ch. 355, §§ 2–4. Regulates the organization of scientific staff of the natural history museum and publication of paleontology and natural history. Superseded by L. 1892, Ch. 378, §§ 10, 19, 22, 23.

L. 1883, Ch. 423. Provides for election of alumni trustees of Cornell University. Superseded by L. 1906, Ch. 1, § 1.

L. 1885, Ch. 533. Consolidated in Education Law, § 398.

L. 1886, Ch. 413, § 1, pt. Provides for report of the then State geologist to the legislature. Was enacted to cover a special case. The State museum is now a part of the education department and the report of said geologist is now transmitted to the legislature in that of the director of the science division of the university.

L. 1886, Ch. 428. Authorizes contract by State superintendent of public instruction with American museum of natural history for a term not to exceed two years. Temporary.

L. 1887, Ch. 602. Provides for apportionment of library moneys to school districts. Superseded by L. 1892, Ch. 573, § 11.

L. 1887, Ch. 709. So much of section 1 as appropriates the additional sum of $60,000 to academies and academical departments of union schools and section 2, regulating the distribution of sums for academies and academical departments of union schools, superseded by L. 1892, Ch. 378, § 26; remainder of section 1 is obsolete.

Sections 3, 4 are dependent.

L. 1888, Ch. 337. Authorizes state superintendent of public instruction to enter into an agreement with American museum of

natural history for continuing instruction for further term of two years and makes appropriation therefor. Temporary.

L. 1889 Ch. 25. Provides for dissolution of academies having a capital stock. Consolidated in Education Law, § 1102.

L. 1889, Ch. 77, § 1. Directs discontinuance of state schools on former Oneida and Madison Indian reservations. Temporary.

L. 1889, Ch. 137. Transfers from regents to superintendent of public instruction charge of teachers' classes in academies and union schools. Covered by L. 1894, Ch. 556, Tit. 11.

L. 1889, Ch. 139. Regulates the powers of trustees of incorporated colleges. Superseded by L. 1892, Ch. 378, § 34.

L. 1889, Ch. 142. Consolidated in Education Law, § 667.

L. 1889, Ch. 468. Section 1 repealed by construction, as appears in the schedule. Section 2 temporary and § 3 when to take effect.

L. 1889, Ch. 517. Provides for establishment of Plattsburgh State normal school.

Sections 1, 3 are temporary, section 4 is dependent and section 2 is covered by Education Law, article 21.

L. 1890, Ch. 197. Provides for extension of period of study of pupils in New York institution for instruction of deaf and dumb. Superseded by L. 1894, Ch. 556, Tit. 15, Art. 14, § 42.

L. 1890, Ch. 352. Amendatory of L. 1889, Ch. 529. Authorizes regents to incorporate educational institutions.

L. 1892, Ch. 378, § 54, provides that all "repeals by this act shall * * * include all laws amendatory of laws hereby repealed" and L. 1889, Ch. 529, was included in such schedule.

L. 1890, Ch. 469. Provides for extension of course of instruction at Central New York institution for deaf mutes. Covered by L. 1894, Ch. 556, Tit. 15, § 42.

L. 1891, Ch. 303. Authorizes regents to provide for university extension courses. Covered by L. 1892, Ch. 378, § 14.

L. 1891, Ch. 329. Relates to librarian of Supreme Court library at Binghamton. Superseded by L. 1893, Ch. 58.

L. 1891, Ch. 377. Section 1 makes appropriation for fitting up State medical library. Temporary.

Section 2 consolidated in Education Law, § 1021.

Section 3, when act takes effect.

L. 1892, Ch. 36. Consolidated in Education Law, § 928.

L. 1892, Ch. 280. Authorizes extension of time for instruction of pupils in Northern New York institution for deaf mutes at Malone. Superseded by L. 1894, Ch. 556, Tit. 15, § 42.

L. 1892, Ch. 352. Amends L. 1853, Ch. 184, § 4, so as to authorize any academy to issue a capital stock not exceeding $200,000. Said L. 1853, Ch. 184, was repealed by L. 1892, Ch. 378, § 52, and said repealing act, § 54, construes "repeals by this act" to "include all laws amendatory of laws hereby repealed." It is contended that General Construction Law, § 100, is sufficiently broad to include such a repeal, notwithstanding the fact that repealing statute and statute amendatory of an act contained in the schedule thereof were passed at same session. Covered by §§ 27–29 of repealing statute.

L. 1892, Ch. 378. University Law, as amended, consolidated in Education Law, as follows:

1	Omitted	23	1093
2	2	24	1095
3	1080	25	1096
4	1081	26	457
5 part	1082	27	1097
part	331	28	1098
6	1083	29	1100
7	1084	30	1101
8	1085	31	1103
9	1086	32	1099
10	1091	33	1104
11	1087	34	1105
12	1088	35	1027
13	1089	36 part	1028
14	1090	part	1029
15	1020	37 part	1030
16	1022	part	1031
17	1023	38	1032
18	473	39	1033
19	1024	40	1034
20	1025	41	1036
21	1026	42	1035
22	1092	43	1037

44	1038	50	1043
45	1039	51	1044
46	1040	52	Omitted
47	1041	53	Omitted
48	1042	54	Omitted
49	Omitted	55	Omitted

REASON FOR OMISSION OF SECTIONS

Section 1. Short title of University Law.

Section 49 provides that regents may use receipts, fees, fines and the like. Abrogated by L. 1897, Ch. 413, § 37, as amended by L. 1901, Ch. 457.

Section 52. Repealing clause.

Sections 53, 54. These sections which are "the saving clauses" of the University Law, are fully covered by the provisions of the General Construction Law, §§ 80, 90, 91, 93–95, 101.

Section 55. When act takes effect.

L. 1892, Ch. 573. Sections 1–9 repealed, as appears in schedule.

Section 10 makes appropriation for year ending October 1, 1892, for public library money. Temporary.

Section 11 repeals certain statutes and substitutes §§ 1–9 of said act in place of one so repealed. Obsolete.

Section 12, when act takes effect.

L. 1893, Ch. 6. Authorizes State superintendent of public instruction to enter into an agreement with American museum of natural history for instruction for further term of four years, and makes appropriation therefor. Temporary.

L. 1893, Ch. 58. Consolidated in Education Law, § 1065.

L. 1893, Ch. 63. Consolidated in Education Law, § 1060.

L. 1893, Ch. 706. Consolidated in Education Law, § 1069.

L. 1894, Ch. 443. Consolidated in Education Law, § 670.

L. 1894, Ch. 488. Disposition of moneys received from insurance on State normal schools. Consolidated in Education Law, § 673.

L. 1894, Ch. 556. Consolidated School Law. The sections which have been consolidated in the Education Law are set forth in the table which follows. When the word "omitted" appears reference is made to the title and section of said Consolidated School Law, set forth following this table, where reason for omission is given.

TITLE 1

1	Omitted	9	335
2	330	10	552
3	Omitted	11	336
4	Omitted	12	337
5	332	13	338
6	331	14	339
7	333	15	340
8	334	16	504

TITLE 2

Article 1

1	Omitted	7	459
2	Omitted	8	461
3	450	9	462
4	451	10	463
5	452	11	464
6	453	12	465

Article 2

13	466	16	469
14	467	17	283
15	468	18	284

Article 3

19	480	24	Omitted
20	481	25	500
21	482	26	501
22	483	27	502
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REASONS FOR OMISSION OF SECTIONS

TITLE 1

Section 1. Short title to Consolidated School Law.

Section 3 provides for appointment of deputy superintendent of public instruction. Covered by Education Law, § 331, which authorizes commissioner of education to appoint deputies and fix their salaries.

Section 4. Same as preceding section.

TITLE 2

Sections 1 and 2 are repealed.

Section 23 relates to funds originally under L. 1829, Ch. 287, in towns which had abolished the distinction between town and county paupers. The records of the education department fail to show that any town has ever taken advantage of the statute, hence this section is inoperative and obsolete.

Section 24. Report of commissioner of education. So far as it refers to section 23, recommended for repeal for same reason. The section is fully covered by Education Law, § 335.

TITLE 3

Section 1 provides that supervisors shall continue vested with the powers imposed upon town superintendents of common schools by L. 1846, Ch. 186. These powers, which relate to gospel and school lots, are fully covered by Education Law, § 280, hence this section is unnecessary.

Section 2. Same subject matter as title 2, section 23, and same reason for appeal.

TITLE 6

Section 6 relates to dissolution of school districts. Amended " to read as follows " by L. 1897, Ch. 512, § 2. Covered by Education Law, Art. 2.

TITLE 7

Section 15 provides for election of officers in school districts in which the number of children exceeds three hundred, except districts in cities or union free school districts whose limits correspond with an incorporated village, or any district organized by special act in which manner of election shall be different than that

prescribed in common school districts, or districts in certain specified counties. Records of the education department fail to show any such district in the State. Obsolete.

Section 18. Levying of tax and issue of bonds for school houses and improvements. Part omitted. Covered by Education Law, §§ 126, 430.

Section 47, as amended, "to read as follows" by L. 1896, Ch. 264, §§ 7, 8, and L. 1906, Ch. 150, § 2. Part of subdivision 10 omitted. Covered by Education Law, § 567.

Section 50. Part in regard to out buildings omitted, because contradictory of same title, section 48, new section 116, which requires that at least two privies be provided to each school and does not limit the cost to fifty dollars. This being a necessity, it does not seem necessary to inject such limitation.

TITLE 8

Section 8 as amended "to read as follows" by L. 1895, Ch. 337, § 1, and L. 1896, Ch. 264, § 14. Relates to qualification of voters at union free school district meetings, eligibility of union free school district officers. All but last sentence, which is consolidated in Education Law, § 140, covered by §§ 92, 141 of said law.

Section 9 authorizes cities or villages in which a union free school district shall be established to raise money by tax for certain enumerated purposes, and when the tax is to be collected in instalments to borrow money and issue bonds. So far as it enumerates the purposes for which the tax may be raised and prescribes the procedure of the bond issue, covered by Education Law, §§ 126, 430. Part authorizing the levying of the tax and prescribing the method is consolidated in same, § 247.

Section 14, as amended, "to read as follows" by L. 1895, Ch. 853, § 1; L. 1896, Ch. 196, § 1, and L. 1897, Ch. 466, § 2. Portion which relates to challenge of voter at union free school meeting covered by Education Law, §§ 93, 94.

Section 15, subd. 6. Portion omitted provides that no school house shall be built unless plans are approved by commissioner of school commissioner district.

Provision was included in title 7, section 17 by the amendment of L. 1904, Ch. 281, § 1, requiring the approval of such plans by

the commissioner of education. This enactment plainly superseded the former, and it is the custom of the department for the commissioner of education to approve all plans for the erection of school houses and for additions thereto when the costs thereof exceed the sum of $500.

By an amendment of L. 1906, Ch. 150, § 3, the former was "amended to read as follows," the only change being the incorporation of the words "or in some insurance company or companies authorized by law to transact business in this state." While this is the later enactment in point of time, it is conceded that, being a mere reiteration of superseded legislation for the purpose of incorporating therein new matter, the provision of the latter, as amended in L. 1904, Ch. 281, together with the procedure of the department, is the existing law on the subject.

Section 15, subd. 11. Portion of subdivision omitted covered by Education Law, §§ 562, 567.

Section 15, subd. 15. Covered by same, § 112.

TITLE 9

Section 4 extends certain provisions of the Consolidated School Law, in relation to powers of boards of education, to the then city of Brooklyn, which is now a borough of Greater New York, and has no board of education. Obsolete.

TITLE 15

Sections 12, 13 make trustees of school districts custodians of the code of public instruction belonging to the district and prescribe a penalty for not delivering the same to their successors in office. Relates to the Consolidated School Law, which is repealed hereby. Obsolete.

Section 17 provides for written contract when employing teachers. Covered by Education Law, § 562.

Section 31. Colored schools in city of New York. Entirely in the jurisdiction of the city and covered by charter thereof.

Section 36 provides that Indian children shall be counted in the enumeration of children on the basis of which enumeration money was formerly apportioned to schools. Money is now apportioned on the basis of teachers employed instead of on the number of pupils. Obsolete.

Section 48 provides for publication of the "Consolidated School Law" and distribution of the same at the time of its enactment. Obsolete.

Section 49 construes the Consolidated School Law. Covered by provisions of General Construction Law, except last clause, which is consolidated in Education Law, § 1161.

Section 50. Repealing section.

L. 1894, Ch. 671. All repealed but §§ 1, 12, 13, as appears in the schedule. Section 1 is the short title. Section 12, when act takes effect.

Section 13 provides that "This chapter shall be known as 'Title 16 of the Consolidated School Law.'" Obsolete.

L. 1895, Ch. 87. Section 1 is amended "to read as follows" as appears in schedule.

Section 2 is a repeal.

Section 3, when act takes effect.

L. 1895, Ch. 222. Provides for purchase and display of United States flag. Superseded by L. 1898, Ch. 481.

L. 1895, Ch. 223. Section 1 consolidated in Education Law, § 20.

Section 2 is amended "to read as follows" as appears in schedule.

Section 3, when act takes effect.

L. 1895, Ch. 231. Sections 1, 2 consolidated in Education Law, § 1067.

Section 3 has been amended "to read as follows" as appears in the schedule.

Section 4 is when to take effect.

L. 1895, Ch. 232. Consolidated in Education Law, as follows: § 1 in § 484; §§ 2, 3 in § 485; §§ 4–6 respectively in §§ 486–488.

Section 7 is dependent.

L. 1895, Ch. 274. Part consolidated in Education Law, § 430, subd. 5; balance superseded by same, §§ 126, 430.

L. 1895, Ch. 362, §§ 1, 2. Superseded by L. 1899, Ch. 489.

L. 1895, Ch. 546. So far as it provides for an annual appropriation for common school libraries consolidated in Education Law, § 476.

Part relating to teachers' library is omitted as this library was abandoned for lack of appropriation some years ago.

L. 1895, Ch. 550. Consolidated in Education Law, §§ 1000–1003.

L. 1895, Ch. 563. Consolidated in Education Law, § 940.

L. 1895, Ch. 577. Consolidated in Education Law, § 1086.

L. 1895, Ch. 630. Consolidated in Education Law, § 1106.

L. 1895, Ch. 767. Consolidated in Education Law, §§ 559–561.

L. 1895, Ch. 768. Authorizes State superintendent of public instruction to appoint his chief clerk as second deputy. Superseded by L. 1904, Ch. 40, § 4.

L. 1895, Ch. 769. Section 1 is amended "to read as follows."
Section 2 consolidated in Education Law, § 408.
Section 3 is dependent.

L. 1895, Ch. 859. Section 1 to and including the words "for increasing the state libraries" consolidated in Education Law, § 1024. The remainder of section 1 was repealed by L. 1901, Ch. 507, § 14.

Sections 2–4 consolidated in Education Law, §§ 1097, 1100, 1104.

Section 5 is amended "to read as follows" as appears in schedule.

Sections 6, 7 consolidated in Education Law, §§ 1035, 1044.

L. 1895, Ch. 1031. Sections 3, 4 consolidated in Education Law, §§ 479, 551. Balance heretofore repealed as appears in the schedule.

L. 1896, Ch. 71. Provides that the legislature shall make a certain annual appropriation for several enumerated law libraries. The legislature has exceeded the amount specified for several years and notwithstanding the enactment that it shall "annually" appropriate so and so much the provision is worthless.

L. 1896, Ch. 156. Consolidated in Education Law, §§ 475, 627.

L. 1896, Ch. 165. Consolidated in Education Law, § 674.

L. 1896, Ch. 177. Consolidated in Education Law, § 280.

L. 1896, Ch. 264. Sections 2–4, 6–12, 14–17, 20, 21 consolidated in Education Law as follows:

Section 2 in § 466.
Section 3 in § 25.
Section 4 in § 27.
Section 6 in § 550.
Section 7 in § 565, subd. 1.
Section 8 in § 562.
Section 9 in § 37.
Section 10 in § 39.
Section 11 in § 40.
Section 12 in § 41.
Section 14, part, in § 140.
Section 15 in §§ 119, 126, 430.
Section 16, part, in §§ 565, subd. 2, 566.
Section 17 in § 625.
Section 21 in § 840.

Part of section 14 omitted covered by new §§ 92, 141; that of section 16 by new §§ 562, 567; section 20 covered by § 562.

Sections 1, 5, 13, 18, 19 amended "to read as follows," as appears in schedule.

L. 1896, Ch. 434. First sentence making appropriation for law library for Appellate Division of Third Department, temporary. Last sentence establishing said law library consolidated in Education Law, § 1054.

L. 1896, Ch. 467. Authorizes regents to transfer to the United States bureau of immigration all records heretofore deposited in said library by commissioners of emigration of the State of New York. Temporary.

L. 1896, Ch. 493. Section 1 consolidated in Education Law, § 1092.

Section 2 grants certain privileges to the state geologist and paleontologist in office in 1896 and provides that he shall report to the legislature. Such report is now transmitted as part of the report of the Director of the Science Division of the University.

Section 3, when to take effect.

L. 1896, Ch. 586. Consolidated in Education Law, § 1094 with temporary provisions omitted.

L. 1896, Ch. 646. Consolidated in Education Law, § 478.

L. 1896, Ch. 901. Consolidated in Education Law, §§ 760, 761.

L. 1897, Ch. 97. Authorizes the superintendent of public instruction to contract with the American museum of natural history for furnishing courses of instruction in certain scientific branches. Partly obsolete and partly covered by Education Law, § 780, which authorizes the commissioner of education to provide for such instruction.

L. 1897, Ch. 185. First sentence of section 1, appropriation. Temporary. Last sentence consolidated in Education Law, § 1054.

L. 1897, Ch. 195. Consolidated in Education Law, § 583.

L. 1897, Ch. 293. Consolidated in Education Law, §§ 60–62, 455, 456.

L. 1897, Ch. 466. Consolidated in Education Law, section 1 in §§ 174, 220; section 2, part, in § 223; balance covered by §§ 93, 94 thereof.

Section 3 provides when act shall take effect.

L. 1897, Ch. 482. Consolidated in Education Law, § 1065.

L. 1897, Ch. 495. Consolidated in Education Law, § 646.

L. 1897, Ch. 512. Consolidated in Education Law, as follows:

Section 1 in § 115.
Section 3 in § 311.
Section 4 in § 406.
Section 5 in § 623.

Section 2 is covered by § 26 of said law and section 6 is when act to take effect.

L. 1897, Ch. 689. Consolidated in Education Law, § 1128.

L. 1898, Ch. 122. Establishes a school of forestry at Cornell which was abandoned by the latter following a decision of the Appellate Division which denied their right to denude the forest. See People v. Brooklyn Cooperage Co., 114 A. D. 723.

L. 1898, Ch. 223. Consolidated in Education Law, § 1123.

L. 1898, Ch. 481. Consolidated in Education Law, §§ 700–704.

L. 1899, Ch. 440. Consolidated in Education Law, § 397.

L. 1899, Ch. 489. Sections 1, 2 consolidated in Education Law, §§ 780, 781.

Section 3 provides for appropriation for additional facilities for instruction in natural history, geography and kindred subjects for a period of four years. Temporary.

Section 4 authorizes the superintendent of public instruction to permit the sale of lantern slides. Abrogated by L. 1897, Ch. 413, § 37, as amended by L. 1901, Ch. 457.

Section 5, when to take effect.

L. 1900, Ch. 22. Amendatory of a section of University Law which is covered by General Construction Law, §§ 80, 90, 91, 95, 101.

L. 1900, Ch. 258. Section 4 repealed by construction as appears in the schedule. Balance consolidated in Education Law, § 1056.

L. 1900, Ch. 301. See note to L. 1898, Ch. 122.

L. 1900, Ch. 481. Consolidated in Education Law, §§ 1030, 1031.

L. 1900, Ch. 492. Section 1 consolidated in Education Law, § 980.

Section 2 repeals.

Section 3 is when to take effect.

L. 1901, Ch. 201. Consolidated in Education Law, §§ 720–723.

L. 1901, Ch. 343. Authorizes the university to waive examinations in certain cases where application is made prior to September 1, 1901. Temporary.

L. 1901, Ch. 480. Consolidated in Education Law, § 122.

L. 1901, Ch. 492. First seven lines of section to and including the words "in relation to such school shall cease" provide for termination of powers of commissioner appointed to receive proposals and determine the location of normal schools. Temporary.

Remainder of the section consolidated in Education Law, §§ 661–662.

L. 1901, Ch. 498. Consolidated in Education Law, § 458.

L. 1901, Ch. 592. Consolidated in Education Law, § 1105.

L. 1901, Ch. 644, 1 pt. Provides that all persons of the age

of ten years and upwards shall be admitted to certain public lectures.

Abrogated by L. 1906, Ch. 683, § 1, page 1770, which provides that said instruction shall be given "under rules and regulations prescribed by the Commissioner of Education," which latter provision is covered by Education Law, § 780.

L. 1902, Ch. 32. Consolidated in Education Law, § 1068.

L. 1902, Ch. 316. Section 1 consolidated in Education Law, § 452.

Section 2, part, consolidated in Education Law, § 453 and remainder repealed by construction as appears in the schedule.

Section 3, when act shall take effect.

L. 1902, Ch. 325. Consolidated in Education Law, § 237.

L. 1902, Ch. 393. Consolidated in Education Law, § 450.

L. 1903, Ch. 62. Consolidated in Education Law, §§ 921, 922.

L. 1903, Ch. 112. Consolidated in Education Law, § 117.

L. 1903, Ch. 125. Sections 1–3, 5, 6, respectively, consolidated in Education Law, §§ 28, 29, 224, 30, 31. The act as enacted had no § 4.

L. 1903, Ch. 175. Consolidated in Education Law, § 95.

L. 1903, Ch. 223. Consolidated in Education Law, § 925.

L. 1903, Ch. 233. Consolidated in Education Law, § 229.

L. 1903, Ch. 265. Section 1 amended "to read as follows," as appears in schedule.

Section 2 consolidated in Education Law, § 601.

Section 3, when to take effect.

L. 1903, Ch. 289. Consolidated in Education Law, § 1101.

L. 1903, Ch. 459. Consolidated in Education Law as follows:

Section 1 in §§ 1, 530.

Section 5 in § 534.

Sections 2–4, 6–8 have been heretofore amended "to read as follows."

L. 1903, Ch. 463. Consolidated in Education Law, § 227.

L. 1903, Ch. 489. Consolidated in Education Law, § 226.

L. 1903, Ch. 576. Provides for appointment of commission to investigate the condition of the adult blind and to recommend legislation for the betterment of their condition. Temporary.

L. 1904, Ch. 37. Consolidated in Education Law, § 1064.

L. 1904, Ch. 40. Sections 1–4 consolidated in Education Law as follows:

Sections 1, 2 in § 1081.

Section 3 in § 330.

Section 4 in §§ 331, 1080.

Section 5 was enacted to give the commissioner of education authority over funds which had already been appropriated in 1904 at the time of the enactment of this statute.

L. 1904, Ch. 166. Consolidated in Education Law, § 465.

L. 1904, Ch. 254. Consolidated in Education Law, § 1061.

L. 1904, Ch. 281. Consolidated in Education Law, § 111.

L. 1904, Ch. 305. Consolidated in Education Law, § 123.

L. 1904, Ch. 322. Consolidated in Education Law, § 600.

L. 1904, Ch. 424. Section 1. "Short title. This chapter shall be known as the Compulsory Education Law for the Indian reservations." Not applicable after consolidation.

The remainder of the statute consolidated in Education Law as follows: Section 2 partly covered by Education Law, § 1, balance consolidated in § 900 thereof; remainder of act consolidated in §§ 901–909, except § 12, which repeals, and § 13, when to take effect.

L. 1904, Ch. 427. All but the last sentence consolidated in Education Law, § 248. Last sentence consolidated in Education Law, § 174.

L. 1904, Ch. 677. Consolidated in Education Law, § 668.

L. 1905, Ch. 119. Consolidated in Education Law, § 1067.

L. 1905, Ch. 154. Consolidated in Education Law, § 951.

L. 1905, Ch. 161. Consolidated in Education Law, § 1084.

L. 1905, Ch. 252. Consolidated in Education Law, §§ 671, 672.

L. 1905, Ch. 280. Section 1 repealed by construction, as appears in the schedule. Balance consolidated in Education Law, §§ 535, 537, 538.

L. 1905, Ch. 311. Consolidated in Education Law, § 536.

L. 1905, Ch. 563. Consolidated in Education Law, § 386.

L. 1906, Ch. 1. Consolidated in Education Law, § 1121.

L. 1906, Ch. 58. Consolidated in Education Law, § 504.

L. 1906, Ch. 64. Consolidated in Education Law, § 1066.

L. 1906, Ch. 150. Sections 1, 2 consolidated in Education Law, §§ 95, 195.

Section 3, part, in § 229, balance covered by § 111.

Section 4 legalizes acts of trustees of school districts who have heretofore insured school property in insurance companies not created under the laws of this State but authorized by law to transact business in this State. Temporary.

Section 5, when act shall take effect.

L. 1906, Ch. 200. Consolidated in Education Law, § 387.

L. 1906, Ch. 218. Establishes the New York State College of Agriculture at Cornell. Consolidated in Education Law, § 1129.

L. 1906, Ch. 682, §§ 3, 4. New York State School of Agriculture at St. Lawrence University. Consolidated in Education Law, §§ 1141, 1142.

L. 1906, Ch. 698. Consolidated in Education Law, § 453.

L. 1907, Ch. 184. Consolidated in Education Law, § 1023.

L. 1907, Ch. 186. Consolidated in Education Law, § 1056.

L. 1907, Ch. 496, § 4. Consolidated in Education Law, §§ 1054, 1055, 1058.

L. 1907, Ch. 585. Consolidated in Education Law, as follows:

Section 1 in § 531.

Section 2 in § 532.

Section 3 in § 534.

Section 4 in § 533.

Section 5 is when to take effect.

L. 1907, Ch. 606. Consolidated in Education Law, §§ 1028, 1029, 1039.

L. 1907, Ch. 608. Consolidated in Education Law, § 926.

L. 1907, Ch. 609. Consolidated in Education Law, § 26.

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